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FOREIGN JUDGMENTS.

PART II.

THE EFFECT OF AN ENGLISH JUDGMENT ABROAD.

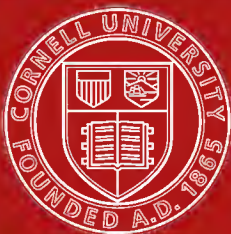
SERVICE ON ABSENT DEFENDANTS.

BY

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PREFACE.

THE first part of this work, published two years ago, dealt with the effect of a foreign judgment in the English Courts: in this second part I have collected as far as it has been possible to obtain it the foreign and colonial law bearing upon foreign judgments and upon service out of the jurisdiction. Its publication seemed warranted by the growing importance of the subject and may perhaps prove a first step towards obtaining a complete embodiment of the law, and to the knowledge and perhaps gradual assimilation of the practice of different nations.

I trust that the errors will be corrected and the omissions supplied by the courtesy of readers both at home and abroad.

F. T. P.

I MITRE COURT BUILDINGS, TEMPLE.

April 7, 1881.

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CHAPTER I.

UNITED KINGDOM.

THE UNITED KINGDOM.

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I. THE JUDGMENTS EXTENSION ACT, 1868.

[31 & 32 Vic: c. 54.]

^{31 & 32 Vic:}
^{c 54.} IN July, 1868, the Judgments Extension Act was passed, 'to render judgments or decreets obtained in certain Courts in 'England, Scotland and Ireland respectively effectual in any 'other part of the United Kingdom.' The following is a short epitome of the Act.

^{ss: 1, 2, 3.}
^{Registration}
^{of judg-}
^{ments.} Registers are kept by the Senior Masters of the Courts in each country for the registration of judgments obtained in the Courts of the other countries. A certificate of the judgment (in the form given in the Schedule to the Act), signed by the proper officer of the Court where such judgment has been obtained or entered up, or by the extractor of the Court of Session, entered in one of these registers, has the same effect and may be proceeded on as a judgment of the Court in which it is so registered. The costs of obtaining and registering this certificate may be recovered as if they were part of the original judgment. But after twelve months from the date of the judgment leave to register has to be obtained from the Court, or a Judge of the Court where it is sought to register the certificate.

^{Costs of}
^{certificate.}

^{After twelve}
^{months}
^{application}
^{necessary.}

Chapter I. In the case of a Scotch decret, where a note of suspension has been passed or sist of execution granted by the Court of Session, if a certificate signed by the Clerk to the Bill Chamber of the Court of Session be produced, execution on the registered certificate shall be stayed until the suspension is repelled, or the sist has been recalled or has expired. [ss: 1, 2, 3.] Effect of stay of execution.

It is presumed that a certificate of a stay of execution granted by an English or an Irish Court would operate in a similar manner.

The registered certificate, in so far as relates to execution under the Act, is under the control of the Court in which it is registered in the same manner as one of its own judgments. [s. 4.] s. 4.

In proceeding on the registered certificate, the plaintiff, though residing in a different part of the kingdom, is not required to find security for costs in respect of such residence, except on special grounds. [s. 5.] s. 5. Security for costs not required in proceedings on registered certificate.

The registration under the Act is intended entirely to supersede any action on a judgment which might be registered: if such an action be brought, costs will not be allowed unless by order of the Court. [s. 6.] s. 6. Action on judgment superseded.

The Act does not apply to any decret pronounced in absence in an action proceeding on an arrestment used to found jurisdiction in Scotland. [s. 7.] s. 7. Scotch arrestment.

The same principle would seem to apply to a judgment in Foreign Attachment in the city of London. And further, a judgment to be capable of registration must be for debt, damages, or costs alone, so that 'equity judgments are excluded, and all 'judgments and decrees *ad facta præstanda* or of the nature of 'prohibitions or injunctions' (*Wotherspoon v. Connolly*); so also judgments in actions for the recovery of land, and in probate and divorce suits. To enforce such judgments, therefore, as are not within the Act an action must be brought, and it would appear that, as heretofore, the judgment is treated in the same manner as one pronounced by a foreign tribunal. Foreign attachment. Judgments other than for debt, damages, or costs.

Wotherspoon v. Connolly.
Sc: sess:
ca: 3rd ser:
ix. 310.

Pray v. Edie, 1 T. R. 267.

One of the immediate results of the Act has been the doing away with a defendant's right to require a plaintiff resident in another part of the United Kingdom to find security for costs in respect of such residence: *Pray v. Edie* established that a plaintiff resident abroad could be called upon to give security for costs 'for Effect of Act. Security for costs generally done away with as to plaintiffs in any part of United Kingdom.

Buller, J. 'this reason, that if a verdict be given against the plaintiff he is 'not within reach of our law so as to have process served upon 'him for the costs.' (*Buller, J.*). The same point was afterwards, for the same reason, decided in *Fitzgerald v. Whitmore*, in the case of a plaintiff residing in Ireland; and the rule was afterwards extended to a plaintiff residing in Scotland. But since the passing of the Act, that reason, in so far as it related to the United Kingdom, has completely ceased. (*Blackburn, J., Raeburn v. Andrews.*) In the Schedule to the Act there are printed two forms of certificates, the first for the plaintiff, to be used in the event of his obtaining judgment; the second for the defendant, to be used for the recovery of the costs of the suit where judgment has been given in his favour. Both parties are thus brought within the jurisdiction of the Court in which the judgment has been registered, and upon the registered certificate that Court can issue process against plaintiff or defendant, as the case may be.

Chapter I.

Fitzgerald v. Whitmore, 1 T.R. 362.*Raeburn v. Andrews*, L. R. 9 Q. B. 118.

Quain, J. The decision in *Raeburn v. Andrews* was based upon the general effect of the Act, and not upon section 5. 'The provision in that section was inserted 'from excess of caution.' It was probably introduced to meet the case mentioned in the proviso at the end of section 1, where some costs may have to be incurred in obtaining the leave of the Court or Judge before the certificate can be registered. (*Quain, J.*)

Irish decisions.

The decisions in the Irish Courts exhibit a divergence of opinion upon this point. Of four cases within one year, two have followed the above decision (*White v. Carrol, Yorke v. M'Laughlin*), and two have abided by the old practice of insisting on the security for costs being given (*Clarke v. Croker, Corner v. Irwin*). In *Yorke v. M'Laughlin* the 'special grounds' mentioned in section 5 were held to mean the extreme cases only of insolvency or absconding; and the fact that the plaintiff was so embarrassed as to be unable to pay a judgment debt obtained against him previously by the defendant, otherwise than by small instalments, was not considered sufficient to entitle the defendant to security.

White v. Carrol, 1r: 1 Rep: 8 C. L. 296.*Yorke v. M'Laughlin*, id: 547.*Clarke v. Croker*, id: 318.*Corner v. Irwin*, id: 504.

Forms in Schedule to be adhered to strictly.

Under the powers given by section 4, the Judges in *Port v. Scannell* set aside a registration in which there was not a substantial adherence to the form of certificate in the Schedule to

Port v. Scannell, 1r: 9 C. L. 426.

Chapter I. the Act. The certificate stated that the judgment was obtained 'in default of appearance,' instead of 'after appearance,' and there was no mention of service on the defendant. From this case and from *Bailey v. Welply*, it would appear that the registration will be set aside for an irregularity on the face of it, but for no other reason. In this latter case it was argued that the judgment described in the certificate as final was not really so, as certain demurrers to some of the pleas were still undecided; there was, in fact, a subsequent order staying all proceedings on the judgment while the demurrers remained undisposed of. Monaghan, C.J., held that the certificate signed by the proper officer must be considered accurate and final. The application to set aside the judgment was wrong, because there was no judgment in the Irish Court to set aside; there was only the certificate of the English Court, and the application should have been simply to take that certificate off the file.

Bailey v. Welply, Ir. Rep. 4 C. L. 243.

Setting aside registration.

Wotherspoon v. Connolly, Sc. sess. ca. 3rd ser. 1x. 310.

The benefit accorded to judgment creditors by this Act is very great, bringing as it does the whole of the United Kingdom under one law for the purpose of making the execution of the judgments of any of its Courts as speedy as possible, no matter in what part of the kingdom the judgment debtor may be found:—'As nearly as is possible consistently with the differences in the laws and usages of the countries, the decrees of the Courts of one country are to receive in the other an effect equivalent to its own decrees.' (Lord President. *Wotherspoon v. Connolly*.) But it is surprising to think that the Act was not passed till the year 1868, that the only method, prior to that year, of enforcing an English judgment in Scotland or Ireland should the judgment debtor have removed there, was by the cumbersome proceeding of following him and bringing an action against him upon the judgment as upon a foreign judgment, wherever he might be found. So long ago as 1855 our Australian Colonies had introduced into their statute books a provision known as the 'Australian Creditors Act,' to give further remedies to creditors against persons removing from one Australian Colony to another, whereby a memorial of a judgment under the Seal of the Superior Court of one Colony, by being filed in the Superior Court of another Colony becomes a record of that Colony, upon which execution may issue in the usual way.

The Australian Creditors Act, 1855.

The other groups of Colonies have not yet copied this wise Chapter I.
 enactment; but the time cannot be far distant when not only
 isolated portions of the Empire shall possess such a law, but
 when one Imperial Statute shall bind together all the many Courts
 acknowledging the appellate Supremacy of the Privy Council and
 the House of Lords.

*Scotch prac-
 tice.*

Act of Sederunt, 11 July 1871.

[passed in pursuance of 'The Judgments Extension Act, 1868.']

- i. That in the extract of a certificate of any judgment obtained or entered up in any of the English or Irish Courts under section 2, induciæ of charge shall be fifteen days, as in an extract of a decret pronounc'd by the Court of Session.
- ii. That, for the registration of each such certificate in the extract thereof, the fees shall be charged which are authorised by Statute 50 G. III. c. 112, to be exacted upon extracts of deeds recorded in the books of Council and Session, and that the same fees shall be charged for each subsequent extract.
- iii. That a fee of 2 shillings shall be paid for each certificate issued under section 3, and no fee-fund dues shall be charged upon such certificates.

II. THE COMPANIES ACT, 1862.

[25 & 26 Vic: c. 89, ss: 122, 123, 125.]

Orders on
 foreign con-
 tributories.

We have seen—Part I. p. 83—that as regards orders of Court against contributories for the payment of calls in the case of an insolvent Company, the English Courts will uphold a foreign order, treating it in all respects as a foreign judgment. (*Leishman v. Cochrane*.) Also that it is the general practice of the English Chancery Courts to make an order for payment of calls on foreign contributories to an English company for what it is worth, and it is believed that, upon proof of the English procedure having been complied with, such an order will be enforced by foreign Courts.

*Leishman v.
 Cochrane*, 12
 W. R. 181.

English,
 Scotch, and
 Irish orders.

English, Scotch and Irish orders are dealt with in sections 122, 123, and 125 of the Companies Act, 1862, upon a principle similar to that of the Judgments Extension Act.

Chapter I.

25 & 26 Vic: c. 89, s. 122.

Any order made by the Court in England for or in the course of the winding up of a company under this Act shall be enforced in Scotland and Ireland in the Courts that would respectively have had jurisdiction in respect of such company if the registered office of the company had been situate in Scotland or Ire'and, and in the same manner in all respects as if such order had been made by the Courts that are hereby required to enforce the same ; and in a like manner orders, interlocutors, and decrees made by the Court in Scotland for or in the course of the winding up of a company shall be enforced in England and Ireland, and orders made by the Court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland by the Courts which would respectively have had jurisdiction in the matter of such company if the registered office of the company were situate in the division of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the Court required to enforce the same in the case of a company within its own jurisdiction.

25 & 26 Vic: c. 89, s. 122.
Orders made in England to be enforced in Scotland and Ireland.

s. 123.

Where any order, interlocutor, or decree made by one Court is required to be enforced by another Court, as hereinbefore provided, an office copy of the order, interlocutor, or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor, or decree having been made ; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor, or decree of the Court enforcing the same.

s. 123.
Mode of dealing with orders to be enforced by other Courts.

s. 125.

In all proceedings under this part of this Act, all Courts, judges, and persons judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the registrar of the Court of the Vice Warden of the Stannaries, and also of the official seal or stamp of the several offices of the Courts of Chancery or Bankruptcy in England or Ireland, or of the Court of Session in Scotland, or of the Court of Vice Warden of the Stannaries, when such seal or stamp is appended to or impressed on any document made, issued, or signed under the provisions of this part of the Act, or any official copy thereof.

s. 125.
Judicial notice to be taken of signature of officers.

Re Hollyford Mining Co: L. R. 5 Ch: 93.
Re City of Glasgow Bank, L. R. 14 Ch: D. 628.

The Scotch or Irish order (and it is presumed the foreign order also) is to be made an order of the Chancery Court in England, and not an order of the Bankruptcy Court (*re Hollyford Copper Mining Co: followed in re City of Glasgow Bank*).

Scotch or Irish order to be made order of English Chancery Court.

Irish decision.

[The Irish Master of the Rolls however in *re Hercules Insurance Co.* thought that it was sufficient to produce an office copy of the order to the Chancery Office without making it an order of that Court.]

Chapter I.
Re Hercules Ins. Co.: 6
1r: Eq:
Rep: 207.

s. 87.
Injunction to restrain action in any part of United Kingdom.

Under section 87, the Court has power, when an order has been made for winding up a company under the Act, to restrain any action commenced against the company. The Act applying to all companies in the United Kingdom, Jessel, M.R. held that the Court in which the winding up was proceeding had jurisdiction to restrain actions against the company in any other part of the United Kingdom. (*re International Pulp Co.*)

Re International Pulp Co.: L.
R. 3 Ch: D.
594.

ss: 100, 165.
Service of summons on officials out of jurisdiction.

A summons in the winding up of a company under sections 100 and 165 on officials out of the jurisdiction may be served by leave of the Court in the same way as a writ under Order XI, the time for appearance being limited as provided by rule 1a of that order. (*re British Imperial Corporation*, followed in *re Household Insurance Co.*)

Re British Imp. Corp.: L. R. 5 Ch: D. 749.
Re Household Ins. Co.: W. N. 1878, 26.

III. THE BANKRUPTCY ACT, 1869.

[32 & 33 Vic: c. 71, ss: 73—76.]

English, Scotch, and Irish orders in bankruptcy.

A similar provision has been introduced in the Bankruptcy Act of 1869 for the more complete union of the Bankruptcy Courts of England, Scotland and Ireland. The Courts of the three kingdoms are made in all respects auxiliary to one another, and the principle of the Judgment Extension Act is applied to all orders in Bankruptcy, so that an order made in one part of the United Kingdom is enforced in another part in the same manner as an order made there.

English warrants in bankruptcy effectual in all parts of Her Majesty's dominions.

Section 76 provides further that all warrants of the English Bankruptcy Courts shall be enforced not only in Scotland and Ireland, but also in the Isle of Man, the Channel Islands, and in every part of Her Majesty's dominions.

Chapter I. *32 & 33 Vic: c. 71, s. 73.*

32 & 33 Vic:
c. 71, s. 73.
Enforce-
ment of
orders in the
United
Kingdom.

Any order made by a Court having jurisdiction in bankruptcy in England under this Act shall be enforced in Scotland and Ireland in the Courts having jurisdiction in bankruptcy in such countries respectively, in the same manner in all respects as if such order had been made by the Courts which are hereby required to enforce the same; and in like manner any order made by the Court in Scotland having jurisdiction in bankruptcy shall be enforced in England and Ireland, and any order made by the Court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the Courts respectively having jurisdiction in bankruptcy in the division of the United Kingdom where the orders made require to be enforced, and in the same manner in all respects as if such order had been made by the Court required to enforce the same in a case of bankruptcy within its own jurisdiction.

s. 74.

The London Bankruptcy Court, the local Bankruptcy Court, the Courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British Court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the Court seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise in regard to the matters directed by such order the like jurisdiction which the Court which made the request, as well as the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdiction.

s. 74.
Courts in the
United
Kingdom
to be auxi-
liary to one
another.

s. 75.

Any Court having jurisdiction in bankruptcy in England under this Act may, if it thinks fit, order that a person named in the order being in Scotland or in Ireland shall be examined here.

s. 75.
English
Court may
order exa-
mination in
Scotland and
Ireland.

s. 76.

Any warrant of a Court having jurisdiction in bankruptcy in England under this Act may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in her Majesty's dominions, in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England may be executed in such countries respectively in pursuance of the Acts of Parliament in that behalf; and any search warrant issued by a Court having jurisdiction in bankruptcy under this Act for the discovery of any property of a bankrupt may be executed in a manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

s. 76.
English
warrants
enforceable
in all parts
of Her
Majesty's
dominions.

IV. PROBATE ACTS.

Chapter I.

[20 & 21 Vic: c. 79, ss: 94 & 95.

21 & 22 Vic: c. 56, ss: 12—14.]

English,
Scotch or
Irish pro-
bates.

The same principle has been applied to probates granted in any part of the United Kingdom: the statutes, 20 & 21 Vic: c. 79 for Ireland, and 21 & 22 Vic: c. 56 for Scotland (the Confirmation and Probate Act), provide that a grant of probate or confirmation, or of letters of administration made in one part of the United Kingdom may, by being resealed, become effectual in any other part.

IRELAND.
20 & 21 Vic:
c. 79,
s. 94.
English
grant sealed
by Irish
Court has
same opera-
tion as Irish
grant.

20 & 21 Vic: c. 79, s. 94 (Ireland).

From and after the 1st January, 1858, when any probate or letters of administration to be granted by the Court of Probate in England shall be produced to and a copy thereof deposited with the Registrar of the Court of Probate in Ireland, such probate or letters of administration shall be sealed with the seal of the said last-mentioned Court, and being duly stamped, shall be of the like force and effect, and have the same operation in Ireland as if it had been originally granted by the Court of Probate in Ireland.

s. 95.

s. 95.
Irish grant
sealed by
English
Court has
same opera-
tion as Eng-
lish grant.

From and after the 1st January, 1858, when any probate or letter of administration to be granted by the Court of Probate in Ireland shall be produced to and a copy thereof deposited with the Registrar of the Court of Probate in England, such probate or letters of administration shall be sealed with the seal of the said last-mentioned Court, and being duly stamped, shall be of the like force and effect, and have the same operation in England as if it had been originally granted by the Court of Probate in England.

In *Divenny v. Corcoran*, the Irish Court had granted administration of personalty in England: a will was afterwards propounded in the English Court but was successfully opposed. The Irish grant was delivered out of the registry to be resealed here.

*Divenny v.
Corcoran*,
32 L. J: P.
& M. 26.

In *Mahon v. Hodges*, English probate had been granted, limited to such property as the testatrix had power to dispose of. The

*Mahon v.
Hodges, Jr.*
Rep. 6 Eq:
344.

Chapter I. Irish Court held that as she had power to dispose of some property in Ireland, it would not decide what the particular sum was, but would reseal the probate, leaving that question to be determined by a Court of construction.

21 & 22 Vic: c. 56, s. 12 (Scotland).

SCOTLAND.
21 & 22 Vic:
c. 56,
s. 12.
Scotch con-
firmation
sealed in
England has
same effect
as probate
or adminis-
tration.

From and after the 12th November, 1858, when any confirmation of the executor of a person who shall in manner aforesaid be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situate in England, shall be produced in the principal Court of Probate in England, and a copy thereof deposited with the Registrar, such confirmation shall be sealed with the seal of the said Court, and returned to the person producing the same, and shall thereafter have the like force and effect in England as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate.

s. 13.

From and after the 12th November, 1858, when any confirmation of the executor of a person who shall so be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in Ireland, shall be produced in the Court of Probate in Dublin, and a copy thereof deposited with the Registrar, such confirmation shall be sealed with the seal of the said Court, and returned to the person producing the same, and shall thereafter have the like force and effect in Ireland as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate in Dublin.

s. 13.
Scotch con-
firmation
sealed in
Ireland has
same effect
as probate or
administra-
tion.

s. 14.

From and after the 12th November, 1858, when any probate or letter of administration to be granted by the Court of Probate in England to the executor or administrator of a person who shall be therein or by any note or memorandum written thereon signed by the proper officer stated to have died domiciled in England, or by the Court of Probate in Ireland to the executor or administrator of a person who shall in like manner be stated to have died domiciled in Ireland, shall be produced in a Commissary Court of the county of Edinburgh, and a copy thereof deposited with the commissary clerk of the said Court, the commissary clerk shall endorse or write on the back or face of such grant a certificate in the form as near as may be of the schedule (F) hereunto annexed; and such probate or letter of administration, being duly stamped, shall be of the like force and effect and have the same operation in Scotland as if a confirmation had been granted by the said Court.

s. 14.
English or
Irish pro-
bates or
letters of
administra-
tion certified
in Scotch
Commissary
Court have
same effect
as Scotch
confirma-
tion.

The memorandum of domicil mentioned in section 14 may be written after probate has issued (*in the goods of Allison*).

*Goods of
Allison, 34
L. J. P. &
M. 20.*

When additional confirmation will be sealed.

An eik or additional confirmation will not be sealed: if the original confirmation in Scotland is incomplete there must be a new confirmation before the English Court can affix its seal (*in the goods of Gordon: in the goods of Wingate: in the goods of Hutcheson*): but where the first confirmation has been sealed by the English Court, and fresh property in England has been discovered, the new confirmation will be sealed (*in the goods of Ryde*).

Certified duplicate confirmation will be sealed.

In the goods of Webster, the original Scotch confirmation had been sent to Victoria: a duplicate obtained from the Victorian Court was sealed in England under s. 12, complete faith being given to the Scotch Commissary's certificate.

Chapter I.

Goods of Gordon, 2 Sw: & T.

622. *Goods of Wingate*, 2 Sw: & T.

625. *Goods of Hutcheson*, 3 Sw: & T.

165. *Goods of Ryde*, 39 L. J: P. & M.

49. *Goods of Webster*, 29 L. J: P. & M. 66.

English practice.

R. 73 (P. R. Non-C.). Irish grants: certificate required.

Rule 73 of Principal Registry (Non-C).

The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto, as if the grant had been made by the Court of Probate in England unless it appears from a certificate of the Commissioners of Inland Revenue, or their proper officer, that such probate or letters of administration is duly stamped in respect of the personal estate and effects of which the deceased died possessed in England. In respect of letters of administration, the provisions of statute 21 & 22 Vic: c. 95, s. 29, must also be complied with.

Rule 87 of District Registry.

R. 87 (D. R.) Irish and Scotch grants to be sealed in principal registry only. English fees.

Grants of probate and administration made in Ireland and confirmations granted in Scotland must be taken to the Principal Registry, and not to a District Registry, to be sealed with the seal of the Court of Probate, in order to the same having force and effect in England.

The fees payable on resealing an Irish or Scotch probate are the same as those payable in Ireland (p. 15).

Irish practice.

English grants: certificate required.

22 & 23 Vic: c. 31, s. 25.

Letters of administration granted by the Court of Probate in England shall not be resealed, under 20 & 21 Vic: c. 79, s. 94, until a certificate has been filed, under the hand of a Registrar of the Court of Probate in England, that bond has been given to the judge of the Court of Probate in England in a sum sufficient in amount to cover the property in Ireland as well as England in respect of which such administration is required to be resealed.

[*cf. in the goods of Potts*, and Miller's Irish Court of Probate Practice.]

Goods of Potts, 2 Sw. & Tr. 5.

Chapter I. The fees payable in Ireland are as follow :—

Irish fees.

For sealing Probate or Administration, with or without will annexed, or exemplifications of the same, under seal of the English Probate Court in order to its becoming in force for property in Ireland,—such fee as would be payable in respect of a grant originally made in Ireland for property equal in amount to the property in Ireland which is to be affected by the Probate or other instrument to which the seal of the Court is to be affixed.

For the Registrar's fiat on an English grant five shillings.

For sealing any confirmation of executor issued by authority of a Commissary Court in Scotland one guinea.

For collating :—

if 10 folios of 90 words each or under half-a-crown.

if above 10 folios of 90 words each, per folio threepence.

Act of Sederunt, 19 March 1859.

Scotch practice.

[*passed in pursuance of 21 & 22 Vic: c. 56*].

vii. That the certificate to be granted by the Commissary Clerk of the county of Edinburgh upon grants of Probate and Letters of Administration in terms of s. 14 and Schedule (F) of the Act, shall be dated as well as subscribed by him.

Certificate to be dated and subscribed by Commissary Clerk.

viii. That all copies of Probates or Administrations deposited with the Commissary Clerk of the county of Edinburgh under s. 14, shall be made patent to all persons desiring to see the same, on payment of the undermentioned fee; and when required, the said Commissary Clerk shall furnish copies or excerpts of said documents, on payment of the undermentioned fee.

All persons to have access.

The fees payable in Scotland are as follow :—

Scotch fees.

To Commissary Clerk of Edinburgh.

a. For collation of English and Irish Probates or Letters of Administration, per sheet of 250 words twopence.

b. For entering abstracts of such Probates or Letters of Administration in the Commissary Books, and granting certificate in the form of Schedule (F) half-a-guinea.

For searcher.

For giving inspection of any of the records of the Court, and in Edinburgh of any copy Probate lodged with the Clerk, each case, when not exceeding 5 years back one shilling.

if beyond 5 years half-a-crown.

Schedule (F) of 21 & 22 Vic: c. 56.

I, A.B., Commissary Clerk [*or* Commissary Clerk Depute] of the County of Edinburgh, hereby certify that this grant of Probate has [*or* these Letters of Administration have] been produced in the Commissary Court of the said County, and that a copy thereof has been deposited with me.

Certificate of Commissary Clerk.

The Australian Inter-Colonial Probate Acts, 1879.

The Australian colonies have recently made another advance **Chapter I.** in the legislation of this particular branch of law. In 1879 the first of the Inter-Colonial Probate Acts was passed in Tasmania; South Australia, Western Australia, and New Zealand have followed the lead.

The provisions resemble those of the Australasian Creditors Act, which has already been noticed; the probate issued in one colony by being resealed in another colony becomes effectual there.

Where extended to U.K.

In the Act of South Australia this provision has been extended to probates of the United Kingdom; and in the Act of Western Australia to probates of all the British dominions.

The questions of Lunacy and Guardianship have not been dealt with by statutes.

With regard to Divorce, the validity of a Scotch decree has again been argued and pronounced upon. It has too been stated that an Imperial Statute may soon decide finally upon the vexed question. With the debates on the passage of such an Act through the Houses of Parliament it may be hoped that the shade of Lolley and the discussions upon his famous case will at last be laid at rest.

V. THE ACT TO AMEND THE LAW OF EVIDENCE, 1861.

[14 & 15 Vic: c. 99, ss: 7, 9—11.]

Proof of Foreign Judgments in England and Ireland.

The seventh section of Lord Brougham's Act provides the method in which foreign judgments are to be proved when they are brought before English and Irish Courts.

'British Colony.'

14 & 15 Vic: c. 99, s. 19.

The words 'British Colony' in this Act apply to the Islands of Guernsey, Jersey, Alderney, Sark and Man, and to all other possessions of the British Crown wheresoever and whatsoever [s. 19]; but not to British India [Stat: Law Rev: Act, 1875].

Chapter I. 14 & 15 Vic: c. 99, s. 7.

All proclamations, treaties, and other acts of state of any foreign state or of any British colony, and all judgments, decrees, orders, and other judicial proceedings (a) of any Court of Justice in any foreign state or in any British colony, and all affidavits, pleadings, and other legal documents filed or deposited in any such Court, may be proved in any Court of Justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, either by examined copies or by copies authenticated as hereinafter mentioned; that is to say, if the document sought to be proved to be a proclamation, treaty, or other act of state (b), the authenticated copy to be admissible in evidence must purport to be sealed with the seal of the foreign state or British colony to which the original document belongs; and if the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any foreign or colonial Court, or an affidavit, pleading, or other legal document filed or deposited in any such Court, the authenticated copy to be admissible in evidence must purport either to be sealed either with the seal of the foreign or colonial Court to which the original document belongs (c), or, in the event of such Court having no seal, to be signed by the Judge (d), or, if there be more than one Judge, by any one of the Judges of the said Court; and such Judge shall attach to his signature a statement in writing on the said copy that the Court whereof he is Judge has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

s. 7.
Sealed copy
of the judgment to be
received.

Signature
of Judge.

[and every such copy shall be *prima facie* evidence of the original thereof in like manner as if such original were produced and proved in due course of law.

Addition to the section in the Victorian Statute—27 Vic: c. 197, s. 20.]

(a). An *ex parte* order of a foreign Court on a shareholder to contribute to the assets of an insolvent company has been held to be within the words of the section, 'order or other judicial proceeding'—(*Leishman v. Cochrane*).

* Judicial
proceeding.

*Leishman v.
Cochrane*, 12
W. R. 181.

(b). An official copy of a Belgian patent sealed with the Belgian seal was admitted as an 'act of state,' without proof of its being an examined copy or proof of the seal—(*ex parte Betts*).

* Act of
State.

Exp: Betts,
11 W. R.
221.

(c). The copy of the judgment itself should be authorised under seal, and not a copy certified as correct by a clerk, although his

* Authenti-
cated copy.

C

signature and authority are verified under the hand of the Judge and seal of the Court—(*Pool v. Hill*:—New Brunswick): The same principle is expressed in *Woodruffe v. Walling* (Upper Canada).

Seal of Court
or signature
of Judge.

(*d*). Where the Court has no seal the Judge's book containing the judgment should be produced: and his handwriting and signature should be proved—(*Kerby v. Elliott*:—Upper Canada). [See also a case before the Statute—*Alves v. Bunbury*.] But the seal which is in ordinary use by the Court from which the judgment comes is sufficient, even if, on the face of it, it purports to be the seal of another Court: proof of course being required that the seal is so ordinarily used. (*Cyr v. Sanfacon*:—New Brunswick. *Junkin v. Davis*:—Upper Canada.)

Chapter I.
Pool v. Hill,
2 Kerr 184.
Woodruffe v.
Walling, 12
Q. B. 501.

Kerby v.
Elliott, 13
Q. B. 367.
Alves v.
Bunbury,
4 Camp: 28.

Cyr v.
Sanfacon,
2 Allen 642.
Junkin v.
Davis, 6 C.
P. 408.
Cavan v.
Stewart,
1 Stark: 525.

If the seal be so worn as no longer to make any impression, it must nevertheless be used (*Cavan v. Stewart*), proof being given that it is in fact the seal of the Court.

ss: 9, 10.
Documents
admissible in
the same
degree in
England,
Wales and
Ireland.

Section 9:—documents admissible in England or Wales without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, are to be equally admissible in Ireland.

Section 10:—the same as to documents admissible in Ireland, to be equally admissible in England and Wales.

Section 11:—the same as to documents admissible in England, Wales or Ireland, to be equally admissible in the British colonies.

14 & 15 Vic: c. 99, s. 11.

s. 11.
Documents-
admissible in
the same
degree in
the Colonies
as in Eng-
land, Wales
or Ireland.

Every document which by any law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any Court of Justice in England or Wales or Ireland without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes in any Court of Justice of any of the British colonies, or before any person having in any of such colonies by law or by consent of parties authority to hear, receive, and examine evidence, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same.

Act does not
apply to
Scotland.

Lord Brougham's Act does not apply to Scotland. The method of proving foreign judgments before the Court of Session is explained in Dickson's Treatise on the Law of Evidence in Scotland, § 1283 *et seq*:

Chapter I. The records are admissible in evidence if they are prepared and authenticated according to the law of the country whence they proceed; but they will be rejected if they are not formal according to that law.

Proof of
Foreign
Judgments
in Scotland.

This statute has been introduced either entirely or in part into the Statute Books of many of the colonies.

COLONIAL STATUTES.

[In the following list the first section mentioned corresponds with section 7 of the English Act; the second to section 11.]

Colonial
Statutes,
—

Bermuda.	No: 3 of 1853.	s. 7.	s. 8.
Ceylon.	„ 9 „ 1852.	s. 8.	s. 1.
Hong-Kong.	„ 3 „ 1852.	s. 5.	
India.	„ 1 „ 1872.	s. 77.	s. 82.
Jamaica.	20 Vic: c. 19.	s. 5.	
Mauritius.	English Act in force.		
New Brunswick.	19 Vic: c. 41.	s. 5.	s. 6.
Newfoundland.	Consol: Stats: c. 23.	s. 12.	s. 13.
New South Wales.	16 Vic: No: 14.	s. 7.	
New Zealand.	'The English Acts Act, 1854,'	s. 7.	s. 11.
Nova Scotia.	Revised Stats: c. 96.	s. 27.	s. 28.
Prince Edward Island.	16 Vic: c. 12.	s. 3.	
Queensland.	16 Vic: c. 14.	s. 7.	
Saint Vincent.	Act No: 99.	cl: 7.	
South Australia.	No: 2 of 1852.	s. 5.	s. 9.
Tobago.	„ 14 „ 1869.	s. 7.	s. 11.
Trinidad.	English Act in force. (No: 12 of 1855.)		
Victoria.	27 Vic: 197.	s. 20.	s. 31.
Western Australia.	16 Vic: 9.	s. 7.	s. 8.

In the Canadian Statute—13 & 14 Vic: c. 19—there is a provision similar to section 7 respecting judgments and decrees in Law, Equity or Bankruptcy, but it is restricted in its operation to England, Scotland, Ireland, Quebec or Ontario, and the United States.

Section 7 also appears in substance in the Civil Code of Lower Canada, s. 1220, and in the Civil Code of Saint Lucia, s. 1152.

VI. STATUTES OF LIMITATION.

Chapter I.

Statutes of
Limitation

We have seen that the procedure in the Courts of every country is of necessity governed by the law of that country. Statutes of Limitation, so long as they do not actually extinguish the debt, are part of the rules of procedure of the Courts, barring only the remedy, that is the right to sue in the Courts of the country.

Statutes of Limitation have three distinct bearings upon the subject of foreign judgments.

i. Where there exists concurrent jurisdiction, the remedy being barred in one country and not in the other.

ii. Where the foreign judgment has proceeded upon a Statute of Limitation.

iii. The time in different countries after which the remedy upon a foreign judgment is barred.

Concurrent
jurisdiction.

i. Every country having Statutes of Limitation peculiar to itself, the prescribing time naturally varies in each according to the will of the Legislature: and it follows therefore that where the chose in action is existent in two or more countries, following the abode of the parties and the place of contracting, the right to sue may be taken away by statute in one, while remaining in full vigour in another. This was illustrated in a recent case, *Alliance Bank of Simla v. Carey*: the Indian and English Courts had concurrent jurisdiction, but the action was on a specialty debt, and in Indian law there is no distinction made in this respect between specialty and simple contract debts, the remedy in either case being extinguished in six years: the action could be brought in England within twenty years.

*Alliance
Bank of
Simla v.
Carey, L. R.
5 C. P. D.
429.*

In British Columbia a Statute has recently been passed (40 Vic: c. 109:—p. 53), which provides that if the remedy on a cause of action is barred in the country of its origin it shall be a good defence in the Colony. A similar provision exists in many of the Codes of the United States.

Judgment
proceeding
on statute.

ii. This division has been dealt with in Part I, page 66.

Chapter I. iii. This division, so far as it relates to an action on a foreign judgment in England, has been dealt with in Part I, page 131. The time prescribed in other countries will be found under their respective sections wherever it has been possible to ascertain it.

Limitation
in action on
foreign
judgment.

A difficulty arises when we come to consider those Statutes of Limitation which do actually extinguish the debt. Story notices these Statutes (Conflict of Laws, § 582*b*.), and the Indian Limitation Act (Act xv of 1877, s. 11) provides that a defence relying on such a Statute shall be good.

Statutes
which ex-
tinguish the
debt.

Now in order that the Courts should recognise or enforce a foreign judgment brought before it, it is essential that it should have been pronounced *on the merits* of the case. It is clear that a judgment recovered under one of the first class of these Statutes, namely those which bar the remedy merely, has not proceeded on the merits of the case, and that therefore it can neither be enforced in, nor recognised by the Courts of any other country. It would seem to follow, if any weight is to be attached to this distinction, that a judgment recovered under one of the second class of these Statutes, namely those which raise a presumption of payment by lapse of time, in other words, those which absolutely extinguish the debt, should be enforced and recognised in a foreign country.

Hendricks
v. Comstock,
12 Indiana
Rep: 238.

In an American case—*Hendricks v. Comstock*—this was doubted, and the Court held that these Statutes also related to procedure, and that a judgment proceeding upon one did not go to the merits of the case and was therefore not to be recognised or enforced. But in *Beckford v. Wade* the law of Jamaica of 4 G. II, giving an absolute title to lands from adverse possession, was held not to be one of procedure.

Beckford v.
Wade, 17
Ves: 87.

Leroux v.
Brown, 12
C. B. 801.

In the case of *Leroux v. Brown* the Court of Exchequer Chamber held that the fourth section of the Statute of Frauds relates merely to procedure, and that therefore an action cannot be maintained in England on a parol agreement which is not to be performed within one year, although it was made in France and was valid and enforceable there.

Leroux v
Brown
considered.
Section 4 of
the Statute
of Frauds.

Williams v.
Wheeler, 8
C. B. N. S.
299.

This decision has provoked much controversy. In *Williams v. Wheeler*, Willes, J. thus spoke of it:—‘I cannot help observing

Criticised by
Willes, J.

‘that I should require much more argument to satisfy me that a Chapter I.
 ‘contract made in France without writing, which is valid by
 ‘French law, is incapable of being enforced in an English Court
 ‘by reason of the requirements of the English law as to the
 ‘formalities of contracts made in England. The general rule is
 ‘*locus regit actum*. And, though I fully recognise the principle
 ‘upon which the judgment of this Court in *Leroux v. Brown* *Leroux v. Brown*, 12
 ‘professes to be founded, *viz.* : that the procedure is regulated by C. B. 801.
 ‘the *lex fori*, I am not satisfied that either of the sections of the
 ‘Statute of Frauds to which reference has been made warrants the
 ‘decision.’ And in a later case, *Gibson v. Holland*, the same *Gibson v. Holland*,
 learned judge again spoke of the decision in these terms :— L. R. 1 C.
 ‘Great difficulty has arisen as to the construction of this section P. 1.
 ‘as being applied to evidence only; and I have on a former occa-
 ‘sion expressed the inability I felt to understand the case of
 ‘*Leroux v. Brown*, though of course we are bound by it.’ On
 the other hand there are the judgments of Jervis, C.J. and Maule, J.,
 which cannot be lightly ignored.

Does this
 section refer
 merely to
 procedure?

Stated shortly, the point in dispute seems to be this :—The
 fourth section says, an action shall not be brought on certain
 agreements unless certain evidence is produced to remove the
 fraud pre-attached to such agreements by the Statute :—

The question then is reduced to this :—Is the requirement of
 certain evidence part of the law of procedure?—The answer
 must be in the affirmative.

Criticised by
 Indian
 Judges.

Couch, C. J.
 [197]
Phear, J.

But *Leroux v. Brown* has also been attacked in the Indian
 Courts. In the case of *Nekram Jemadar v. Iswariprasad Pachuri*, *Nekram v. Iswariprasad*, 5
Couch, C.J., said that he agreed with Story in not distinguishing as Bengal Rep. 643.
 [197] is usually done the fourth from the seventeenth sections : *Phear*, J.,
 said that in his opinion section 4 was undoubtedly a rule of pro-
 cedure, but that in cases where such a conflict arose as in *Leroux*
v. Brown, the rule of procedure ought to be abandoned in favour
 of the law of contract :—The requirement of section 4 is paralleled
 with ‘such a rule as that which would disqualify parties to a suit
 ‘from being witnesses in their own behalf. The effect of this rule
 ‘in cases of any parol contract to which the party alone could
 ‘speak, would be precisely analogous to that of section 4, for
 ‘obviously the aggrieved party would be deprived by it of the

Chapter I. 'only means which he possessed of proving his contract; and I suppose no one would consider a rule which disqualified a certain class of persons from appearing as witnesses to be anything other than a rule of procedure. It may be questioned whether the principles which admittedly guide the Courts of all countries in the administration of justice under a conflict of law do not in truth necessitate the abandonment of the rule of procedure in favour of the law of contract: The Court of Common Pleas no doubt went the length of holding that the rule of procedure must still be maintained. I think I should hesitate a long time before I should be able to bring myself to concur in that conclusion. But the first part of s. 17 of 21 G. III. c. 70, makes the manner of hearing and determining, which comprises the procedure of the Supreme Court, (and therefore impliedly in my opinion section 4)—generally applicable to the suits to which it refers: but the latter part expressly cuts this down by the proviso that in the case of *Gentus*, all matters of contract and dealing between party and party shall be determined by the laws and usages of *Gentus*; in other words, the rule of procedure if it affects the original right of the parties, must in the event of conflict give way to the law and usages of *Gentus*.'

Section 4, though relating to procedure, does not apply to *Gentus*: on account of 21 G. III. c. 70, s. 17.

In this Indian case a statute solved the difficulty: but the necessity for such a statute seems to imply that in its absence the rule of procedure would be the more powerful in determining upon the conflict: an injustice to the natives which the Legislature sought to remove. But the arguments of Phear, J., seem to apply with equal force to Statutes of Limitations; and once the fourth section is conceded to be a question of evidence, that is a question of procedure, we can suppose a Statute of Limitation to stand in its place in *Leroux v. Brown* without affecting the principle of that decision. Till the case is overruled we must consider it to be good law.

Leroux v. Brown, 12 C. B. 801.

[cf: Story—'Conflict of Laws'—ss: 262, 435, 631.]

VII. SERVICE OUT OF THE JURISDICTION. Chapter I.

I. ENGLAND.

Assumed
jurisdiction.

The question of assumed jurisdiction over absent defendants is so replete with difficulty that I venture to add a few more remarks to those which have already appeared in the first part of this work, and at the same time to refer to the recent decisions under Order XI.

In *ex parte Blain, re Sawers*, Lord Justice James most clearly expounded the principles upon which an absent alien defendant might with justice be summoned before the tribunals of a foreign state, at the same time defending that peculiar provision of the Judicature Acts which has already been noticed, the assumption of jurisdiction where a breach only of a contract has been committed within the jurisdiction:—

Exp:
Blain,
re Sawers,
L. R. 12 Ch:
D. 522.

James, L.J.

‘An English Statute is only applicable to English subjects or to foreigners who by coming into this country, whether for a long or for a short time, have made themselves during that time subject to English jurisdiction.

Order xi.

‘The English law has a right to say to any one, If you make a contract in England, or commit a breach of a contract in England, under a particular Act of Parliament particular procedure may be had by which we can effectually try the question as to that contract and that breach, and with regard to any property you may have in this country we may give execution against that property: and further, if the foreigner being served with a writ under the provisions of the Judicature Act, did not choose to appear, the Legislature is right in saying, If you do not appear you will commit a default in that way, and we will give judgment against you. To what extent the decision of such a question, or whether that judgment would under such circumstances be recognised by foreign tribunals as being consistent with international law and the general principles of justice is a matter which must be determined by them.’

Chapter I. The object I have had in view is the insistence on the doctrine that such a judgment should be recognised and enforced by foreign tribunals as one not inconsistent either with international law or with general principles of justice, but as consistent with that care which a State is bound to exercise over its subjects' rights, even though, where aliens are concerned, it leans to a greater favour towards the citizen. I have endeavoured to show that England in leading the way has but one difficulty to overcome, which is, to believe it possible that an equal sense of justice pervades foreign legislatures when they too lay down rules to guide their tribunals in assuming jurisdiction over absent defendants: that that sense of justice pervades too the established processes for summoning aliens to their Courts, though the processes be as varying as there are various states, though they too show a greater favour to their subjects. Surely comity and not contrariety should pervade the Courts of States when they are thus brought into contact one with the other, and surely the comity should be that they should enforce each for the other *jus* for *jus*.

Foreign Courts should enforce a judgment proceeding on Order xi : and English Courts should enforce foreign judgments proceeding on corresponding rules.

The process adopted in foreign countries, as nearly as can be ascertained, will be found under their respective sections in the succeeding chapters. We may now proceed to the further consideration of Order XI.

ORDER XI. When notice of service is to be given in lieu of service

Under the English procedure notice of service is ordered to be given in lieu of actual service when the defendant is a foreigner out of the jurisdiction; and the reason of this was pointed out by Sir James Hannen in *Beddington v. Beddington*:—‘Service of process upon a foreigner not a subject of Her Majesty in another country may involve unpleasant questions of jurisdiction, whereas if it were not formally served upon, but only notice of the proceedings given to, such foreigner, no such consequences can arise.’

Beddington v. Beddington, L. R. 1 P. D. 426.

Sir James Hannen.

If the absent defendant is an English subject, or it is presumed, a foreigner in English territory out of the jurisdiction of the Courts in England, the writ (Jud: Act, 1875, Appx: A. Pt: I. No. 2) will be used and may be actually served upon the defendant: (*Westman v. Aktiebolaget: Beddington v. Beddington*)

Westman v. Aktiebolaget, L. R. 1 Ex: D. 237.

English subject.

Foreigner. but where the defendant is a foreigner in foreign territory, Form No : 3, that is to say, the notice of writ in lieu of the service of the writ will be used : (*re Howard, Padley v. Camphausen*). Chapter I.
re Howard,
48 L. J. Ch :
364.

What writ to be used where notice only to be served. Where notice of the writ is served abroad, the writ used is as before Form No : 2 ; and it is understood to be the practice, although the Act is not clear upon this point, to send this writ out to the agent abroad with the notice of writ, in order that the defendant may see it.

Address for service. O. xii. rr: 7 & 8. As to the defendant's appearance within the time limited by the order, rules 7 and 8 of Order XII. apply : that is to say, the defendant has to give his address for service, either upon his solicitor or himself (should he appear in person) within three miles from Temple Bar.

Pleadings. At this address all subsequent papers may be left, sufficient time being always allowed to enable the defendant to put in his pleadings, if he remain out of the jurisdiction.

General construction of rule 1. In determining whether any case comes within rule 1, the Courts will give to the whole clause a wide construction so as not to prevent proper and reasonable cases from being brought within it (Hall, V.-C.—*Harris v. Fleming*). In this case the contract was entered into in India, the breach only arising within the English jurisdiction. *Harris v. Fleming*,
L. R. 13 Ch :
D. 208.
Cresswell v. Parker,
L. R. 11 Ch :
D. 601 ;
M'Stephens v. Carnegie,
42 L. T. 15.
Bacon v. Turner,
34 L. T. 64.

In *Cresswell v. Parker* and *M'Stephens v. Carnegie* the Court refused to allow service out of the jurisdiction.

In *Bacon v. Turner* the Court held that the service of the notice in lieu of writ was inappropriate in the case of an English woman married to a German and residing abroad with him : she could not be considered a foreigner, and therefore the writ itself would have to be served.

In *Casey v. Arnott* the cause of action was a slander of title published in Ireland of a personal chattel in England : Grove and Denman, JJ., held that the property situate within the jurisdiction is to be physically or materially affected by the 'act, deed, will or thing' complained of ; and that such slander did not come within the meaning of the rule because it produced no effect upon the thing itself, but upon the minds of intending purchasers. *Casey v. Arnott*,
L. R. 2 C. P.
D. 24.

'Within the jurisdiction.'

'Within the jurisdiction' is of course to be interpreted to mean

Chapter I. 'within the territorial jurisdiction.' Service out of the jurisdiction will therefore not be allowed where a collision has occurred upon the high seas. In such cases the Judicature Act has not altered the old law: so far as the *res* is concerned the Court has jurisdiction *in rem* if it is arrested within territorial jurisdiction:

'territorial jurisdiction.'

re Smith,
L. R. 1 P. D.
300.
The Vivar,
L. R. 2 P.
D. 29.
R. v. Keyn,
L. R. 2 Ex.
D. 63.
Harris v.
Owners of
Franconia,
L. R. 2 C. P.
D. 173.

so far as the owner of the *res* is concerned the Court has no jurisdiction *in personam* unless he is served with a citation within the territorial jurisdiction. (Sir R. Phillimore—*re Smith: The Vivar*). As to the limits of territorial jurisdiction, *R. v. Keyn* is binding upon all the Courts. (*Harris v. Owners of Franconia*.)

The Court or Judge in considering the application for service out of the jurisdiction is to exercise a discretion, and to consider whether the nature of the suit is such as to justify leave being granted. The case may be so plainly absurd, it may relate to such a subject matter, or to a controversy between persons so circumstanced, that the Court may at once decline to act. Everything is to be left to the exercise of this judicial discretion, and the decision, subject of course to appeal, is final. The defence to the suit therefore must not call in question the propriety of the service. (*Preston v. Lamont*.)

Judge to consider nature of the suit.

Preston v.
Lamont,
24 W. R.
928.
Great Australian
Co. v.
Martin,
L. R. 5 Ch.
D. 1.

The judgments delivered in *The Great Australian Mining Co. v. Martin* by Malins, V.-C., and by Lords Justices James, Baggallay and Bramwell in the Court of Appeal are most instructive, and show how careful the English Courts are in examining the nature of the case before they will sanction the hardship of bringing a man from the Antipodes perhaps, where there may be judicial tribunals before which he might be sued. Under the old consolidated orders of the Court of Chancery, when such an application was made, the Court would examine into the bill (*Maclean v. Dawson*): but when Order XI. came into operation it was necessary to provide for the new and additional circumstance that there was no longer a bill before the writ was issued, and therefore it was necessary that something should be provided which would correspond with the statement of facts which, under the old practice, the Court had before it: therefore it was provided by rule 3, that the applications must be supported by evidence, by affidavit or otherwise, showing

Maclean v.
Dawson,
4 De G. & J.
150.

Baggallay,
L. J.

Affidavit to support application.

- O. xi. r. 3. i. the place or country where the defendant is, or may probably Chapter I.
 be found ;
 ii. whether the defendant is a British subject or not ;
 iii. the grounds upon which the application is made.

*Bramwell,
L.J.*

Bramwell, L.J., thought that it would not be necessary for this affidavit to be made with the same rigour that used to be required in an affidavit to hold to bail; but that it ought to state, not generally, that there is a good cause of action, but specifically, what the cause of action is. If the action is *bonâ fide* there can be no hardship entailed; the plaintiff or anybody able to swear to it can make the affidavit, and the person who has the conduct of the case should swear that he has every reason to believe that he can make it out. The case above-mentioned therefore stood over to enable the plaintiff to file a fresh affidavit: this having been done, the Court was of opinion that the facts disclosed by the new affidavit were sufficient, and leave was granted to serve the writ upon the defendant in Sydney.

We have been considering the evidence or affidavit required under rule 3 to support the application. A further affidavit is required under rule 12, to assist the judge in exercising his discretion as to granting the application. The Judge has to consider, and the affidavit has to supply the facts requisite for the consideration,

Further
affidavit to
support
application.

- O. xi. r. 12. iv. the amount or value of the property in dispute or sought to
 be recovered ;
 v. (if the defendant is resident in Scotland or Ireland) the
 existence in that place of residence of a local Court of
 limited jurisdiction, having jurisdiction in the matter in
 question ;
 vi. (if the defendant is resident in Scotland or Ireland) the com-
 parative cost and convenience of proceeding in England or
 in the place of the defendant's residence.

Further
information
in affidavit.

These two affidavits are in practice combined in one—and this should further state that the defendant is truly and justly indebted to the plaintiff: also the number of days' post to the defendant's place of residence, and what the plaintiff considers to be a reasonable time within which appearance should be ordered. It is believed that the time usually is limited to about a fortnight

Time for
appearance.

Chapter I. beyond double post time. The greatest strictness is required in the preparation of this affidavit. (*Wood v. M'Innes; Tottenham v. Barry.*) It will be seen that the information to be furnished by the affidavit comes under two heads: first, the Judge has to decide as to the plaintiff's legal right to obtain the leave asked for; and secondly, as to the advisability of granting it, even though this right be established.

Wood v. M'Innes,
27 W. R. 49.
Tottenham v. Barry,
L. R. 12 Ch:
D. 797.

It is believed that it is the practice in Chambers to require paragraphs v and vi in all cases: but there seems to be no doubt from the wording of rule 1a, that this information is only required when the defendant is resident in Scotland or Ireland, and not when he is resident abroad. The whole object of the provision is to enable the plaintiff to obtain what is due to him without compelling him to follow the defendant to his place of residence. Paragraph iv seems to be a sufficient guarantee that the defendant shall not be summoned to England for any frivolous action, but it certainly seems an excess of care in the defendant's behalf to excuse his coming to England if he happens to reside in a place where there is a Court competent to try the action. In the case of Scotland and Ireland this does not apply, and it is one step towards the more complete consolidation of the three kingdoms. In the case of Scotland and Ireland the application will certainly be refused when the plaintiff may have as complete a remedy by applying to the local Court. (*ex parte M'Phail*).

The existence of Court at place of defendant's residence: and comparative cost of proceeding there.

Exp:
M'Phail,
L. R. 12 Ch:
D. 632.

The order of the Court or Judge should provide for service of interrogatories if required; and for an injunction if necessary. *Interrogatories and injunctions.*

Young v. Brassey,
L. R. 1 Ch:
D. 277.
Bustros v. Bustros,
L. R. 14 Ch:
D. 849.

(*Young v. Brassey.*) The Chancery Courts will follow the Common Law form when leave is obtained to serve notice of writ in lieu of writ. (*Bustros v. Bustros.*)

Swansea Co: v. Duncan,
L. R. 1 Q. B.
D. 644.

The rules of Order xi. apply to notices to third parties under Order xvi., rules 17 and 18 (*Swansea Shipping Co. v. Duncan*).

Notice to third parties.
O. xvi. rr:
17 & 18.
O. xi. r. 2.

Firebrace v. Firebrace,
26 W. R.
617.
Exp:
Blain, re Savers,
L. R. 12 Ch:
D. 522.

By rule 2, rules 1 and 1a are extended to Probate actions: but the Court has no power under this order nor under 20 & 21 Vic: c. 85, s. 42, to order service out of the jurisdiction of a petition for restitution of conjugal rights (*Firebrace v. Firebrace*).

A judgment by default under this order is not an act of bankruptcy—(*ex parte Blain, re Savers*).

The Judicature Act has introduced in the matter of service out Chapter I.
of the jurisdiction an important change in the procedure as it
existed under the Common Law Procedure Act, 1852.

The conclusion of section 18 of that Act is as follows:—

C. L. P. Act,
s. 18.

Provided always, that the plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of inquiry, or before one of the Masters of the Superior Courts, in the manner hereinafter provided, according to the nature of the case, as the Court or Judge may direct; and the making such proof shall be a condition precedent to his obtaining judgment.

This provision has been omitted in the Judicature Act; the writ and notice of writ conclude like the ordinary writ: 'and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.'

Signing
Judgment
under O. xiv.

O. iii. r. 6.

Reading these paragraphs together, it appeared to the writer that there was no intention of doing away with the old condition precedent to the plaintiff's obtaining judgment. But Order iii. rule 6, introduced specially-indorsed writs, and this indorsement, coupled with the affidavits required under Order xi., supply the place of the evidence given upon a writ of inquiry or before one of the Masters under the old Act, and upon non-appearance to this writ judgment may be signed by default.

The Rules of Court, April 1880, introduced some new forms for specially-indorsed writs for service out of the jurisdiction.

Forms.

The forms now in use are as follows:—

Rules 1880. H. 18.

Judge's order for service out of the jurisdiction.

Appendix A. Part I. No: 2.

Writ for service out of the jurisdiction, or where notice in lieu of service is to be given out of the jurisdiction.

Rules 1880. A. 2a.

Specially-indorsed writ for service out of the jurisdiction.

„ *A. 2b.*

Writ from District Registry for service out of the jurisdiction.

Chapter I. *Rules 1880. A. 2c.*

Specially-indorsed writ from District Registry for service out of the jurisdiction.

Appendix A. Part I. No: 3.

Notice of writ in lieu of service to be given out of the jurisdiction.

[Writ to be used with this form, Appendix A. Part I. No: 2 or Rules 1880. A. 2a.]

Rules 1880. A. 3a.

Notice of writ in lieu of service to be given out of the jurisdiction — District Registry Form.

[Writ to be used with this form, Rules 1880. A. 2b. or A. 2c.]

The indorsement on the writ, whether ordinary or special, is copied in full into the notice of writ, but there is nothing to draw the absent foreigner's attention to the provisions of Order iii., which enable the plaintiff in 'proceeding therein' to sign judgment by default.

Service on Corporations.

The rules relating to absent defendants apply in all respects to Foreign Companies. Thus a foreign company not trading in England may be served abroad (*Scott v. Royal Wax Candle Co.*): but where a person residing abroad carries on business in England as a firm, *i.e.* with 'Co.' after his name, he may be sued here, the writ being served at the place of business on the head officer here, under Order ix., rule 7: (*O'Neil v. Clason: Newby v. Van Oppen*. O. ix. r. 7. *cf.* Lord St. Leonards in the *Carron Iron Co. v. Maclaren*, cited by Blackburn, J.). It is different, however, if the foreign company has only employed an agent here who has entered into a contract for them; the company must then be served abroad (Blackburn, J.). Further, the writ must be served upon the head officer and not on an ordinary clerk (*Mackreth v. Glasgow & S. W. R. Co.*): The criterion as to his power of accepting service being as stated by *Bramwell, B.*,—The person may be served if he could have been served were the company an English one.

Scott v. Royal Wax Candle Co.: L. R. 1 Q. B. D. 404.

O'Neil v. Clason, 46 L. J. C. P. 191.
Newby v. Van Oppen, L. R. 7 Q. B. 293.
Carron Co. v. Maclaren, 5 H. L. Ca. 416.
Mackreth v. Glasgow Ry. Co.: L. R. 8 Ex. 149.

Foreign Companies.

Agent of Foreign Companies.
Head officer.

II. IRELAND.

The Judicature Act for Ireland, based upon the same principles as the English Acts of 1873 and 1875, was passed in 1877—40 & 41 Vic: c. 57.

The following are the rules corresponding with Order xi.

40 & 41 Vic:
c. 57, s. 33.

40 & 41 Vic: c. 57.

s. 33. [The same in effect as English Act, O. xi. r. 1a.]

Circum-
stances to
be con-
sidered by
the judge.

Wherever application shall be made for leave to serve any document by which a cause may be commenced upon a defendant resident out of the jurisdiction of the Supreme Court, whether by serving such defendant personally or by substituting service upon another person for him, the Court or Judge to whom such application shall be made shall have regard to the amount or value of the claim or property affected, and to the comparative cost and convenience of proceedings in Ireland, or in the place of the defendant's residence; and no such leave shall be granted without an affidavit stating the particulars necessary for enabling the Court or Judge to exercise a due discretion in the manner aforesaid.

Affidavit.

O. i. r. 3.
writ for
service
abroad.

ORDER I. *rule 3.* [English Act. O. ii. r. 4.]

O. i. r. 4.
form of
affidavit.

rule 4. The application for leave shall be granted on an affidavit entitled as between the parties to the intended action, and, 'In the matter of the Supreme Court of Judicature Act (Ireland) 1877.'

O. i. r. 5.
form of writ.

rule 5. [English Act. O. ii. r. 5.]

Forms Nos: 3 & 4, Part I, Appendix (A):—[English Act, Forms Nos: 2 & 3, Part I, Appendix (A).]

O. v. r. 2.
concurrent
writs within
and without
jurisdiction.

ORDER V. *rule 2.* [English Act. O. vi. r. 2.]

O. viii. r. 3.
copy of order
to be served
with writ.

ORDER VIII. *rule 3.* Whenever an order shall be made by the Court or Judge to substitute service or to serve a party personally out of the jurisdiction, a copy of the order directing such mode of service shall be served along with the writ.

O. x. r. 1.
service out of
the jurisdic-
tion: in
what cases.

ORDER X. *rule 1.* Service out of the jurisdiction of a writ of summons or notice of a writ of summons, whether on a defendant to the action, or a third party ordered to be served, [remainder the same as English Act, O. xi. r. 1].

O. x. r. 2.
affidavit to
obtain leave.

rule 2. [English Act. O. xi. r. 3].

Chapter I. ORDER X. rule 3. [English Act. O. xi. r. 4]—with this addition O. x. r. 3. time for appearance.
and such leave may be given by the same order by which leave is given to issue the writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction.

rule 4. [English Act. O. xi. r. 5]. O. x. r. 4. service of notice in lieu of writ.

The English Order xi. r. 2, relative to service of the writ in Probate Actions is omitted; and also Order liv. r. 2*a*, relative to the jurisdiction of the Masters of the Courts in the matter.

Traill v. Porter, 1 Ir. L. R. 60. Whenever different times for appearing have to be allowed to different defendants, the proper course is to issue concurrent writs Concurrent writs to be issued when different times for appearing allowed.
(*Traill v. Porter*).

III. SCOTLAND.

[Bell's Dictionary of the Law of Scotland. Mackay's Practice of the Court of Session.] The Scotch method of summoning absent defendants before the Court of Session is by Edictal Citation. Edictal Citation. old form. The ancient form was a citation published at the Market Cross in Edinburgh and the Pier and Shore of Leith: but this was discontinued by the Judicature Act, 6 G. IV. c. 120, and the modern form substituted, which is as follows:—

Edictal citations, charges, publications, citations and services new form. as against persons forth of Scotland are to be done and performed by delivery of copies at the record office of the Keeper of the Minute Book, or by a messenger at arms putting it in the box marked 'Edictal Citations' at the New Register House.

An abstract of the copy so delivered, specifying the time of service, the nature of the writ, the names and designations of the parties, and the day against which the defender is called to give obedience or to make appearance is then to be registered in the 'Register of Edictal Citations.' abstract to be registered.

Three separate registers are kept: one for citations on summonses and orders of service against parties forth of Scotland; another for citations by virtue of letters of supplement to persons forth of Scotland to appear before any of the inferior Courts, (in which case they are cited, not as principal defenders, but merely for their interest): and a third for all charges, intimations and three kinds of registers. letters of supplement.

D

publications to persons forth of Scotland by virtue of letters other Chapter I.
than summonses passing the Signet.

The abstracts are printed and the record is at all times open for inspection.

Two or more
defenders.

If two or more defenders are to be cited edictally, delivery at the office of one copy only is sufficient, 'provided that such copy 'bear upon its face that it is delivered for all and each of such 'persons.' (Act of Sederunt, 11 July, 1828, s. 22).

'forth of
Scotland'

A person is held to be forth of Scotland after an absence of forty days from his usual place of residence. (Act of Sederunt, 14 Dec. 1805).

Although there is no provision in the Acts of Sederunt for giving notice of the citation to the defender, yet it is believed that if his residence forth of Scotland is known it is the practice to inform him of the citation having been issued.

in what cases
used.

There is no provision in the Scotch Procedure Acts resembling the English Order xi., rule 1, Edictal Citation being only available when the defender has any property, however small, within Scotland, or any debts which may be arrested: and also under the doctrine of reconvention, which somewhat resembles the English counterclaim: if a person out of the jurisdiction avails himself of the Scotch Courts, he may be edictally cited by the defender as to a cause of action collateral to the original cause of action.

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THE COLONIES.

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[The classification adopted is based upon that in use at the Colonial Office.

The author gratefully acknowledges much valuable assistance received from Mr Russell and Mr Atchley of the Colonial Office Library, in the compilation of this chapter].

General principles of
Colonial Law.

THE LAW prevailing in any colony depends upon the charter granted to it at the time of its passing under the control of the mother country. This charter usually provides for one of two things: Either the law of England at the date of the charter is made bodily the law of the new colony; or the laws already in force there at that date are continued. The appointment of a Colonial Legislature provides for the passing in due course of statutes according to the wants of the colonists, subject to the approval of the Sovereign in Council. Some few Imperial Statutes are passed, or Orders in Council issued, upon important subjects extending to the colonies, but full power is vested in the Colonial Legislature to pass such acts as it thinks fit. To a settled country the settlers are presumed to carry with them from the mother country such portion of its Common Statute Law as is applicable to their new situation, and also the rights and immunities of British subjects. (*Kielly v. Carson*. 4 Mo: P. C. C. at p. 84); but as Lord Cranworth pointed out in *Whicker v. Hume*,

English Common Law
taken to a settled colony.

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(7 H. L. Ca: at p. 161) the difficulty of determining what laws are adapted to the situation of the colony is of necessity very great.

Thus where a territory becomes English by occupation, as the Falkland Islands, the English Common Law is made the law of the colony: but where a territory is ceded to England, the foreign law then in force is continued. French, Roman-Dutch and Spanish laws prevail in different parts of Her Majesty's dominions, and the Courts of these colonies being within the appellate jurisdiction of the Privy Council, that tribunal is frequently called upon to decide questions of foreign law. The principles which guide it in determining such questions will be found under the colonies Quebec and British Guiana. It rests with the party relying on the foreign law to prove it to the Court: unless this is done, although a different system of jurisprudence prevails in the colony the general law of this country will be applied, as for example, to questions relating to lands in a colony. (*Bentinck v. Willink*. 2 Hare 1).

Foreign law continued in ceded colony.

Foreign law to be proved to the Court.

Many of the smaller colonies adopt English statutes without alteration: Sometimes an act is passed introducing several at the same time, as in the case of 'The English Acts Act, 1854' of New Zealand; and the Law No: 12 of 1855 of Trinidad, which introduced all the then recent amendments in the English law of evidence. Where this has been done, and the English statute has been authoritatively construed by the Court of Appeal in England, such construction should be adopted by the Courts of the colony. (*Trimble v. Hill*. L. R. 5 App: Ca: 342). The same principle applies to the construction of Imperial Statutes extended in their application to any or all of the colonies.

Adoption of Imperial Statutes.

Construction of Imperial Statutes.

The Imperial Statute, 6 & 7 Vic: c. 22, confirmed certain colonial laws which provided for the admission of evidence of barbarous and uncivilised people who, being destitute of the knowledge of God and of any religious belief, would otherwise be incapable of giving evidence on oath in the Courts of the colonies.

Evidence of uncivilised people to be received in certain colonies.

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The following is a list of the colonies in which foreign law prevails.

French.

Quebec (Lower Canada).
 Saint Lucia.
 Mauritius.
 Channel Islands. [*Old Norman*].

French and Italian.

Malta.

German.

Heligoland.

Spanish.

Trinidad.

Roman-Dutch.

British Guiana.
 Cape of Good Hope.
 Griqua Land West.
 Ceylon.

I. THE INDIAN EMPIRE.

[including MYSORE and BERAR ; the NATIVE STATES ; ADEN, and the Islands of PERIM and SOCOTRA].

[Charter 14 G. III.]

- s. 13. The Court has jurisdiction in all actions arising in Bengal, Behar and Orissa (and Benares) against any subject residing within those provinces, upon any contract in writing with a British subject, when the cause of action exceeds 500 rupees, and it shall have been agreed that the matter may be determined by the Court : but not against persons never resident there, or then resident in Great Britain or Ireland, unless the action be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than 30,000 rupees.]

Code of Civil Procedure. [No: 10 of 1877.]

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- s. 12. (*Explanation*). The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action : unless, (according to the section) the suit is pending before Her Majesty in Council. *lis alibi pendens* no bar to action.
- s. 13. *Res Judicata.* (*Explanation 6*). Where foreign judgment is relied on, the production of a judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record, but such presumption may be removed by proving the want of jurisdiction. Court's jurisdiction to be presumed, except in case of apparent error.
- s. 14. No foreign judgment shall operate as a bar to a suit in British India, EFFECT OF FOREIGN JUDGMENTS.
- (a). if it has not been given on the merits of the case. defences allowed.
- (b). if it appears on the face of the proceeding to be founded on an incorrect view of International Law, or of any law in force in British India.
- (c). if it is in the opinion of the Court before which it is produced contrary to natural justice.
- (d). if it has been obtained by fraud.
- (e). if it sustains a claim founded on a breach of any law in force in British India.
- ss: 36. 37 (a) (c), 38. A recognised agent may be served with process and may enter an appearance and make applications :— service on recognised agent of non-resident.
- such agents are, persons holding general powers of attorney from parties non-resident authorising such acts, and persons carrying on business for and in the names of parties non-resident, in matters connected with such business, when no other agent is so authorised. definition of recognised agent.
- s. 41. Any one in the jurisdiction may be appointed agent. Appointment of agent.
- The appointment may be special or general, and shall be made by an instrument in writing signed by the principal ; and such instrument, or if the appointment be general, a duly attested copy thereof, shall be filed in Court. Special or general, to be filed.

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Service on non-resident
with no agent.

Service through British
Resident.

Endorsement of Resident.

Form of service on absent
defendants with no agent.

affidavit of agent.

PROOF OF FOREIGN
JUDGMENTS.

Sealed copy of the judgment to be received.
Documents admissible in the same degree as in United Kingdom.

As to foreign judgments.

Certificate of H. M.'s representative.

s. 89. If the defendant is non-resident and has no agent empowered to accept service, the summons is to be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

s. 90. If there is a British Resident or Agent of the Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

The general form of service on absent defendants is shortly as follows:—A copy of the writ together with the plaint signed by counsel or attorney (s. 51) and concise statements (s. 58) is sent to an agent in the foreign country for service on the defendant. After service, the agent returns an affidavit that he has served the copy of the writ as required, and that the defendant in his presence signed his name at the back signifying his acceptance of the service, or that the defendant refused to sign, as the case may be.

Evidence Act. [No: 1 of 1872.]

s. 77 (b). in effect the same as 14 & 15 Vic: c. 99, [U.K.] s. 7.

s. 82. *id:* s. 11, as to documents admissible in England, Scotland and Ireland.

Code of Civil Procedure.

s. 86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government

of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Chapter II.

Limitation Act. [No: 15 of 1877.]

STATUTES OF LIMITATION.

s. 11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed in this Act.

Suits on foreign contracts,

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

When foreign statute a good defence.

Actions on judgments of British India are limited to 12 years: *Schedule*.
on foreign judgments to 6 years.

II. NORTH AMERICAN.

CANADIAN PROVINCES.

[ONTARIO to PRINCE EDWARD ISLAND, inclusive.]

ONTARIO [*Upper Canada.*]

Common Law Procedure Act. [Consol: Stat: U. C. c. 22].

ss: 43, 44. The same as English C. L. P. Act, 1852, s. 18.

[see Nova Scotia, p. 50].

SERVICE OUT OF JURISDICTION;
in what cases,
as to actions against
British subjects

In s. 44, the words 'by affidavit' are omitted after 'upon the Court or Judge being satisfied.'

s. 45.

id:

s. 19.

the same as to foreigners.

s. 46.

id:

s. 22.

Concurrent writs.

13 & 14 Vic: c. 19,

s. 1. the same as English Act 14 & 15 Vic: c. 99, s. 7, but much curtailed, and restricted to judgments of England, Scotland, Ireland, Lower Canada and the United States.

PROOF OF FOREIGN JUDGMENTS.

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23 Vic: c. 24

relates to the mutual enforcement of the judgments of Ontario and Quebec. The first section of this Act, which was repealed by 39 Vic: c. 7, Schedule A, (13) allowed original defences to be raised in actions on foreign judgments.

Districts of Algoma,
Thunder Bay, and
Nipissing.

43 Vic: c. 12

passed to improve the administration of Justice in the Districts of Algoma, Thunder Bay and Nipissing.

s. 5. Jurisdiction of the Court of Algoma:—provided always as to the additional jurisdiction so hereby conferred that the contract was made within Algoma, or the cause of action arose therein, or the defendant resides therein.

QUEBEC [*Lower Canada*]

[*Including the Isle of ANTICOSTI and the MAGDALEN Isles*].

[The sections of the Civil Code of Saint Lucia have been printed (p. 65), that being the most recent Code published in the colonies. The Code of Civil Procedure of that island not having been issued, the sections of the Quebec Code have been printed.]

Civil Code.

Rights of British sub-
jects.
Actions against non-
resident aliens: in what
cases.
Actions against inhabi-
tants: in what cases.
Security for costs.

PROOF OF FOREIGN
JUDGMENTS.

s. 18. The same as Civil Code of S. Lucia, s. 14. [p. 65]

s. 27. *id*: s. 20.

s. 28. *id*: s. 21.

s. 29. *id*: s. 22. [p. 66.]

s. 1220 *id*: s. 1152,

as to security for costs when the judgment is denied, see s. 145, Code Civ: Proc: p. 48.]

Judicial hypothec.

s. 2034 *id*: s. 1923.

Code of Civil Procedure.

Foreign Companies may
sue.

s. 14. All foreign corporations or persons, duly authorised under any foreign law to appear in judicial proceedings, may do so before any Court in Lower Canada.

Foreign executor or
administrator may sue.

Any person who, according to the laws of a foreign country, is authorised to represent a person who has died or made his will

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therein, leaving property in Lower Canada, may also appear as such in judicial proceedings before any Court in Lower Canada.

ss: 61. 62. 64. Foreign companies or corporations, and all executors of wills, administrators, or representatives of the succession of persons having had property in Lower Canada, may if they have an office or an agent in Lower Canada, or carry on business therein, be summoned there; and service may be made at the office, speaking to a person employed in such office, or elsewhere upon the president, secretary or agent: And if they have no such office, nor any known president or secretary or agent, upon a return to that effect, the Court or Judge may order the service to be by a notice to be inserted during one month in at least one newspaper; and such notice is held to be a sufficient service. If the agent is one for specific purposes only, and not having the charge of the company's business without limitation he cannot be served for the defendant company. (*Macpherson v. S. Lawrence Insurance Co*: 5 L. C. Rep: 403).

Service on foreign companies with office in L. C.

With no office.

s. 68. If the defendant has left or has never had his domicile in Lower Canada and has property therein, the Court or Judge or prothonotary, upon a return stating that he cannot be found in the district, may order him to appear within two months of the last publication of such order.

Service on absent defendant with property in L. C.

The order must be published in French and English, and be twice inserted in a newspaper published in each language respectively in the district where the Court is held; in default of either of such newspapers in such district, then it is inserted in a similar newspaper of the nearest locality: The newspapers are to be indicated in the order.

Publication of the order.

In this case execution can only issue after one year unless security be given for repayment of the money in the event of the judgment being reversed upon revision. [s. 552].

s. 92. No judgment by default for non-appearance can be rendered or recorded against any absentee defendant, who has been summoned as such.

No judgment by default against absent defendant.

ss: 113. 115. The Court, whether a declinatory exception is pleaded or not, is to determine whether the action is within its jurisdiction; in declaring itself incompetent it may award costs according to circumstances.

The Court itself is to determine as to its jurisdiction at once.

Chapter II.

Denial of foreign judgment proved under s. 1220, Civil Code.

s. 145. The denial of any document specified in s. 1220 of the Civil Code (i.e. records of foreign judgments) must be accompanied by the giving of security for the costs of the commission required to obtain the proof of such document.

French law in Lower Canada.

The province of Quebec, or Lower Canada, formerly in possession of the French, was ceded to the English in 1763: the French codes then in force there remained law in the province by virtue of the Quebec Act.

In those colonies where foreign laws still prevail, proof should be given in some form that the ordinance in question was transmitted to the colony in order to make it part of the law of the colony: Ordinances do not take effect in colonies *proprio vigore*, to do so they must be registered there. (*Du Boulay v. Du Boulay*, L. R. 2 P. C. 430; *Hutchinson v. Gillespie*, 4 Mo: P. C. C. 378).

Thus the French laws of Feudal tenures having been introduced and registered in French Canada still continue in force. (*Sœurs de S. Joseph v. Middlemiss*, L. R. 3 App: Ca: 1102).

'Coutumes de Paris' and Roman Law.

The edict of Louis XIV. (1663) which created the Conseil Supérieur and established Courts of Justice for Lower Canada directed that the Coutumes de Paris should be the general law of the province. The Roman law though held to govern as *loi écrite* in some parts of the South of France was in other parts of the kingdom only borrowed and modified by 'Les Coutumes' as expounded by the jurisprudence of the Parliament of Paris. (*Symes v. Cu villier*, L. R. 5 App: Ca: 138.) With regard to the Roman law in force, the Theodosian Code and therefore the law of the Antonines ought to prevail over that of Justinian in countries governed by the Code of Paris. (*Evanturel v. Evanturel*, L. R. 6 P. C. 1).

Roman Codes in force.

The Privy Council is necessarily called upon very frequently to expound foreign law: The principles upon which the English Court should act in such cases are laid down in the judgment of the Privy Council delivered by Turner, L.J., in the case of *Her Majesty's Procureur and Advocate General v. Bruneau* (L. R. 1 P. C. 169). They are a condensation of the principles collected in the 3rd section of Sirey's note upon Article 1 of the Code Napoléon:—

‘We are to be guided by the plain sense of the law which applies to the question: we are to make no distinction which can alter that sense: assuming the sense of the law to be positive, we are not to modify or restrict the law upon any consideration, however powerful: the law is to be applied as it stands, any accidental errors notwithstanding: we are not to weigh the reasons of the law against the words of it: if the law applicable to the case be special, we are to understand it according to its particular scheme (*propre système*) without adding to it what is called the Common Law.’

As to the interpretation of the French law by Canadian Courts and by the Privy Council on appeal, the modern French authorities consisting of commentators on the Code Napoléon and the decisions of the French Courts since the promulgation of that Code are not binding, though they are extremely valuable aids towards the right determination of any question. (*id.*)

Interpretation of French Law.

With the cession however English Criminal Law came into force in the province, and still continues in force except so far as it has been altered by Canadian or Imperial Statutes applicable to Canada. (*R. v. Cooté*, L. R. 4 P. C. 599).

English Criminal Law in force.

NOVA SCOTIA.

[including CAPE BRETON ISLAND.]

43 Vic: c. 13,

s. 27, reproduces the old Act, 24 Vic: c. 6, which allowed original defences to be raised in an action on a foreign judgment:—

EFFECT OF FOREIGN JUDGMENTS.

In any action heretofore or hereafter to be brought in any Court of this province against any person domiciled in this province upon a judgment recovered against such person in any Court in any other province or country, the record or other evidence of such judgment shall not be conclusive evidence in any such action on such judgment in this province of the correctness of such judgment; but the defendant in any such action on such judgment may enquire into contest and dispute all or any of the facts upon which such judgment is founded, or the cause in the suit in which such judgment was given, and may raise the same defence

Original defences may be raised.

E

Chapter II.

in such suit upon such judgment as he could have done if such suit had been brought for the original cause of action, as fully as if such judgment in such other province or country had never been given or entered up.

SERVICE OUT OF THE JURISDICTION.*Revised Statutes, c. 94.*

Concurrent writs.
As to actions against
British subjects.

s. 38. the same as English C. L. P. Act, 1852, s. 22.

s. 43. *id.* s. 18.

The cases in which the writ can be issued out of the jurisdiction are,

- i. where the cause of action arises within the jurisdiction; or,
- ii. where the cause of action is in respect of the breach of a contract made within the jurisdiction.

[Upon the construction of this section in the Courts of the United Kingdom see *Jackson v. Spittal* (L. R. 5 C. P. 542) and *Vaughan v. Weldon* (L. R. 10 C. P. 47).]

Service on agent.

s. 44 provides for service of the writ upon the defendant's authorised agent if he have one in the colony.

Time granted to agent.

s. 45. The Court or Judge may on sufficient cause shown by the agent allow a reasonable time for such agent to communicate such writ to the defendant.

Publication of order in
Gazette good notice to
defendant.

s. 46. If after due diligence no agent can be found, the Court or Judge may make an order for the defendant to appear and plead on the day named, which order is published in the *Royal Gazette* newspaper, or in such other way as may be directed: The publication of such order shall be deemed good service on the defendant, and the plaintiff may proceed with the action.

Appearance good if
before judgment signed.

s. 47. The defendant in the case mentioned in s. 46, may appear at any time previous to judgment being signed.

Rehearing during three
years.

s. 48. The defendant may within three years obtain a rehearing of the case, on an affidavit accounting for his non-appearance, and disclosing a defence on the merits. The rehearing operates as a stay of execution, but the judgment obtained, until it be removed, stands as security to the plaintiff for the amount thereof.

Plaintiff to give security.

s. 49. Execution is not to issue upon the judgment until the plaintiff gives security for repayment of all moneys levied thereunder in case the judgment should be reversed.

s. 50. The same as the English C. L. P. Act, s. 19.

The cases in which the writ may issue are the same as those mentioned in s. 43, the form of the writ only being altered.

Chapter II.

As to actions against foreigners.

Revised Statutes, c. 96.

PROOF OF FOREIGN JUDGMENTS.

ss: 27 . 28. The same as English Act 14 & 15 Vic: c. 99, ss: 7 . 11.

Act No: 96.

s. 34 The probate or copy of a will under the hand of the Judge or Registrar shall be received as evidence of the original will in all causes, unless upon cause shown on affidavit. The Court may require other proof.

Foreign probates.

This section applies to wills regularly proved abroad.

NEW BRUNSWICK.

27 Vic: c. 41.

In any action on a foreign judgment where the defendant was not personally served with the original process or first proceeding in the suit within the jurisdiction of the Court where the judgment was obtained, the defendant may go into the merits of the case, and may avail himself of any matter of law or fact which would have been available had the original action been tried in the province; provided always, that notice of such defence shall be given in like manner as is required by the course and practice of the Courts of the province, any law, usage or custom to the contrary notwithstanding.

EFFECT OF FOREIGN JUDGMENTS.

When defendant not personally served: original defence may be raised.

18 Vic: c. 25.

The same as English C. L. P. Act 1852.

ss: 18 . 19 relate to service out of the jurisdiction. (see Nova Scotia, p. 50).

SERVICE OUT OF THE JURISDICTION.

As to actions against British subjects and foreigners.

14 Vic: c. 2.

Service on non-resident persons carrying on business in the Colony:—A copy of process is to be left, with the ordinary English notice thereunder written of the purport and effect of such notice, at the place of business with some agent, clerk, or adult person in the employment of the defendant, and known to the person serving the writ to be such. (s. 1).

As to actions against non-residents carrying on business in the Colony.

Chapter II.

Affidavit.

The nature and place of the business carried on by the defendant in the province, and the particular nature of the agency or employment of the person with whom the copy of the process may have been left for the defendant must be stated in the affidavit of the Sheriff or Deputy Sheriff making such service, or otherwise proved to the satisfaction of the Judge before any order is made for perfecting such service. (Rules of the Supreme Court, T. T. 1857).

PROOF OF FOREIGN
JUDGMENTS.

19 Vic: c. 41,

ss: 5 . 6. The same as English Act 14 & 15 Vic:
c. 99, ss: 7 . 11.

MANITOBA.

38 Vic: c. 5,

provides for the administration of justice in the province; but there is no special reference to service out of the jurisdiction.

NORTH WEST TERRITORIES.

[including KENVATIN District.]

No: 4 of 1878,

Service on agent carrying on business for absent defendant.

s. xii. (2). If the defendant be absent but have an agent managing clerk or other representative resident and carrying on business for him in the province, service may be upon such representative.

SERVICE OUT OF THE
JURISDICTION.

As to action against
British subjects.

(3). The same as English C. L. P. Act 1852, s. 18. (see Nova Scotia, p. 50). When the stipendiary magistrate is satisfied that the provisions of the section have been complied with he may order the plaintiff to proceed subject to such conditions as he thinks fit to impose: But in every such action the plaintiff before obtaining judgment, shall prove his claim as if the same were contested.

Service on Corporations.

(4). In actions against corporations, the service may be upon the president, head officer, cashier or clerk.

BRITISH COLUMBIA.**Chapter II.**

[including VANCOUVER ISLAND and QUEEN CHARLOTTE ISLAND, united by the British Columbia Act, 1866, 29 & 30 Vic : c. 67 (U. K.).]

42 Vic : c. 12

introduced in substance into the province the English Judicature Act.

The orders and rules have not at present been received at the Colonial Office, but it is presumed that they will resemble the English orders.

39 Vic : c. 40,

s. 2, provides a form of service of legal process on foreign companies carrying on business in the province, there being no office or head officer.

Service on foreign companies.

The writ of summons is to be delivered at Victoria to the Registrar or Deputy Registrar of the Supreme Court: an advertisement is inserted in the *Gazette* for four issues, after which the service is valid, and the plaintiff proceeds to prove his claim.

Advertisement in *Gazette*

40 Vic : c. 109,

s. 1. In case any suit or action shall be instituted in this colony against any person here resident, in respect of a cause of action or suit which has arisen between such person and some other person in a foreign country, wherein the person so sued shall have been resident at the time when such cause of action or suit shall have first arisen, such suit or action shall not be maintained in any Court of civil jurisdiction in this colony, if the remedy thereon in such foreign country is barred by any statute or enactment for the limitation of actions existing in such foreign country.

STATUTES OF LIMITATION.

If foreign statute bars the remedy it is a good defence.

s. 2, provides the form of plea.

PRINCE EDWARD ISLAND.

There is no special reference in the statutes of the province to service out of the jurisdiction.

16 Vic : c. 12,

s. 3. The same as English Act 14 & 15 Vic : c. 99, s. 7.

PROOF OF FOREIGN JUDGMENTS.

Chapter II.

Foreign probates.

19 Vic : c. 7.

s. 2. The probate of all wills whenever offered in evidence shall be received as *prima facie* evidence of the execution of the will, of the contents, and of the death of the testator, unless proof to the contrary is offered.

NEWFOUNDLAND.

[including LABRADOR.]

SERVICE OUT OF THE
JURISDICTION;
in what cases,

Consolidated Statutes, c. 20.

s. 7. The same as English C. L. P. Act, 1852, s. 18; except that service out of the jurisdiction is allowed only when the cause of action arises within the jurisdiction. (see Nova Scotia, p. 50).

The section applies to cases where the defendant is out of the jurisdiction with no partner or recognised agent therein.

Concurrent writs.

s. 9. The same as English C. L. P. Act, s. 22.

43 Vic : c. 12.

for the amendment of the administration of justice, provides that rules are to be issued, apparently to be based on the English Judicature Act.

PROOF OF FOREIGN
JUDGMENTS.

Consolidated Statutes, c. 23.

ss : 12 . 13. The same as English Act, 14 & 15 Vic : c. 99, ss : 7 . 11.

III. AUSTRALIAN.**NEW SOUTH WALES & NORFOLK ISLAND.**

SERVICE OUT OF THE
JURISDICTION.
As to actions against
British subjects and
foreigners.

17 Vic : No : 21.

ss : 16 . 17. The same as English C. L. P. Act, 1852; ss : 18 . 19. (see Nova Scotia, p. 50).

16 Vic : No : 14.

PROOF OF FOREIGN
JUDGMENTS.

s. 7, the same as English Act, 14 & 15 Vic : c. 99, s. 7.

Australian judgments.

The Australasian Creditors Act [19 Vic : No : 12.]

to give further remedies to creditors against persons removing

from one Australasian Colony to another. A judgment from one of the other Colonies on being filed in the Superior Court of New South Wales becomes as effectual as a judgment of that Court, and execution may issue upon it.

This Act resembles in its operation the Judgment Extension Act, 1868, of the United Kingdom.

VICTORIA.

25 Vic: No: 274,

regulates at present the procedure of the Courts; there is no reference in it to service out of the jurisdiction.

s. 90, defines the jurisdiction of the Victorian Courts: it extends to any part of the Colony and to fifty miles from the frontiers. Limits of Victorian jurisdiction.

s. 307, corresponds with the Australasian Creditors Act of the other Colonies: (see New South Wales, p. 54). Australian judgments.

s. 308, provides the method of obtaining execution in cases arising under the preceding section.

27 Vic: No: 197.

ss: 20. 31. The same as English Act, 14 & 15 Vic:

c. 99, ss: 7. 11.

[s. 20 concludes thus:—And every such copy shall be *prima facie* evidence of the original thereof, in like manner as if such original were produced and proved in due course of law.]

The copy of probate of an English (or foreign) will is not sufficient: the original probate or an exemplification under seal of the Court must be produced and deposited in the Court. (*in the goods of Whittaker.* 2 W. & W: I. E. & M. 114). Foreign probates.

And further, evidence that the foreign Court had, in the particular case, jurisdiction to grant the probate.

The facts should be proved, where reasonably practicable, by affidavits made before Commissioners of the Court, even where Imperial or Colonial Acts have made other evidence admissible. (*in the estate of Von Stieglitz.* 3 Vic: L. R: I. P. & M. 35).

QUEENSLAND.

Judicature Act, 1876. [40 Vic: No: 6].

Order xi. rule 1. The same as English O. xi. r. 1.

SERVICE OUT OF THE JURISDICTION:

in what cases.

Chapter II.

As to actions against
British subjects.

rule 2. The same as English C. L. P. Act, 1852,
s. 18 (in part).

In case any defendant being a British subject is residing out of the jurisdiction it shall be lawful for a Court or a Judge upon being satisfied by affidavit that the cause of action is one in which under the last preceding rule a writ may be served out of the jurisdiction, and that the writ was personally served upon the defendant, — to — and subject to such conditions as to the Court or Judge may seem fit.

Notice of writ to be served
on foreigner.

rule 3. Notice of writ to be served on foreigner out of the jurisdiction.

Service of notice of writ.

rule 4. The same as English O. xi. r. 5.

Concurrent writs.

Order vi. rule 2. *id.* O. vi. r. 2.

No leave required to
serve out of the juris-
diction.

Order ii. rule 4. A writ of summons for service out of the jurisdiction or of which notice is to be given out of the jurisdiction may be issued without leave.

Forms of writ, and notice
of writ, the same as
English forms.

rule 5. The same as English O. ii. r. 5.

Time to be allowed to
defendant for appearance.

rule 6. Time for defendant's appearance is to be limited as follows: for

New South Wales or Victoria	.	.	.	one month.
Tasmania or South Australia	.	.	.	six weeks.
New Zealand or Western Australia	.	.	.	two months.
Elsewhere	.	.	.	six months.

**PROOF OF FOREIGN
JUDGMENTS.**

16 Vic : c. 14.

s. 7, the same as English Act, 14 & 15 Vic: c. 99, s. 7.

Australian judgments.

The Australasian Creditors Act. [19 Vic : c. 12.]

(See New South Wales, p. 54.)

TASMANIA, (or VAN DIEMEN'S LAND).

[including the FURNEAUX GROUP and KING ISLAND.]

**SERVICE OUT OF THE
JURISDICTION.**

18 Vic : No : 9.

As to actions against
British subjects and
foreigners.

ss : 17 . 18. The same as English C. L. P. Act, 1852, ss : 18 . 19.

Australian judgments.

The Inter-Colonial Judgments Act, 1878. [42 Vic : No : 8.]

standing in the place of the old Australasian Creditors Act (21 Vic : No : 20). (See New South Wales, p. 54.)

The new Act is the same as the old one in its effect, providing for the execution of the judgments of the other Australasian Colonies, but it contains more details as to the registration of the judgment.

The Inter-Colonial Probate Act, 1879. [42 Vic: No: 26.]

Australian probates and administrations.

An enactment similar to the preceding one relating to probates and administrations granted in the other Australasian Colonies.

s. 2. Probates and administrations granted in the other Colonies are to be of like force as if granted in Tasmania, on being resealed.

s. 3. The seal is not to be affixed till the duty is paid: and as to administration till a bond is entered into.

SOUTH AUSTRALIA.

41 & 42 Vic: No: 116

adopts with slight variations the English Judicature Acts.

The orders and rules have not at present been received at the Colonial Office, but it is presumed that they will resemble the English orders.

No: 2 of 1852.

ss: 5. 9. The same as English Act, 14 & 15 Vic: c. 99, ss: 7. 11.

PROOF OF FOREIGN
JUDGMENTS.

The Australasian Creditors Act. [No: 9 of 1855—6.]

(See New South Wales, p. 54.)

Australian judgments.

The Inter-Colonial Probate Act. [No: 137 of 1879.]

(See Tasmania, p. 56.)

Probates and adminis-
trations of Australia, and of
United Kingdom.

The provisions of this Act extend to probates and administrations of the United Kingdom.

WESTERN AUSTRALIA.

The Supreme Court Act, 1880. [44 Vic: No: 10.]

adopts with slight variations the English Judicature Act.

The orders and rules have not at present been received at the Colonial Office, but it is presumed that they will resemble the English orders.

Chapter II.**PROOF OF FOREIGN
JUDGMENTS.**

Australian judgments.

16 Vic : No : 9.

ss: 7 . 8. The same as English Act, 14 & 15 Vic: c. 99, ss: 7 . 11.

The Australasian Creditors Act. [19 Vic : No : 13.]

(See New South Wales, p. 54.)

The Inter-Colonial Probate Act. [No : 5 of 1879.]

(See Tasmania, p. 56.)

The provisions of this Act extend to probates and administrations of the whole of the British Empire.

Probates and administrations of Australia, and of the United Kingdom, and Colonies.

NEW ZEALAND.*[consisting of NORTHERN, MIDDLE and STEWART'S Islands].**The English Laws Act, 1858. [21 & 22 Vic : c. 2.]*

declares the law in force in England up to January 14, 1840, to be the law of the Colony.

R. G. 1856.

Service on agent.

25. Personal service is allowed on defendant's agent authorised to defend actions.

**SERVICE OUT OF THE
JURISDICTION.**

Endorsement of writ.

The Absent Defendants Act. [24 Vic : No : 3.]

s. 4. The usual writ is to be used with this further endorsement: 'This writ is issued out of the Supreme Court of the Colony of 'New Zealand for service out of the said Colony:' and, 'This writ remains in force six calendar months including the day of 'the date thereof.' 'It cannot be served after such time unless 'the defendant consent to be served therewith.'

Allowed in what cases.

s. 6. The affidavit in support of the application must show:

Affidavit.

i. That the cause of action arose within the Colony; or that it is in respect of a breach of a contract made or to be wholly or in part performed within the Colony.

ii. That the writ with the declaration annexed was personally served; or that reasonable efforts were made to effect personal service, and that it came to the defendant's knowledge:

iii. That the defendant wilfully neglects to appear, or is living out of the jurisdiction to defeat or delay his creditors.

Chapter II.

The Court or Judge may give leave to proceed in the action.

s. 7. The plaintiff is required to prove his claim in the usual way. Proof of claim required.

s. 8. The writ is not to be void for irregularities, but may be amended. Writ may be amended.

s. 9. The same as English C. L. P. Act, s. 22. Concurrent writs.

s. 11. The maximum punishment for making false affidavits under this Act is six years' penal servitude. Punishment for false affidavits.

*The English Acts Act, 1854.***PROOF OF FOREIGN JUDGMENTS.**

ss: 7 . 11. The same as English Act, 14 & 15 Vic: c. 99, ss: 7 . 11.

The Australasian Creditors Act. [21 & 22 Vic: Sess: II. c. 21.] Australian judgments.
(See New South Wales, p. 54.)

The Inter-Colonial Probate Act. [No: 38 of 1879.] Australian probates and administrations.
including the Fiji Islands. (See Tasmania, p. 56.)

FIJI ISLANDS.*No: 14 of 1875.*

establishes a Supreme Court of Judicature in the Islands.

s. 26. The Common Law, the rules of Equity, and the Statutes of general application of the United Kingdom at the date when the Colony obtained a local legislature, 2 January 1875, to be in force in the Colony. English law in force.

s. 27. The practice in force in England at the same date to be in force in the Colony. English practice in force.

[The English Judicature Act with the rules and orders of 1873 are thus in force, the later Act and rules not having as yet been adopted].

s. 28. Sections 26 and 27 are to apply so far only as the circumstances of the Colony and its inhabitants, and the limits of the Colonial jurisdiction permit. Construction of English statutes.

To facilitate the application of the laws the Court may construe the same with such verbal alterations not affecting the substance as may be necessary to render the same applicable to the matter before the Court.

Chapter II.

Australian judgments.

The Inter-Colonial Judgments Act. [No: 12 of 1875.]

(See New South Wales, p. 54.)

The Colony has been included in the Inter-Colonial Probate Act of New Zealand.

Fiji Marriage Act,
(U.K.).*The Fiji Marriage Act.* [41 & 42 Vic: c. 61 (U.K.).]

to render valid marriages solemnized in Fiji, before 10 October 1874.

IV. WEST INDIES**JAMAICA.**

[CAYMAN ISLANDS, governed by the laws of Jamaica. 26 & 27 Vic: c. 31 (U.K.).]

No: 24 of 1879

introduced the English Judicature Act into the Colony, and

No: 39 of 1879

promulgated a code of Civil Procedure following in substance the English orders and rules.

SERVICE OUT OF THE
JURISDICTION.Time for appearance to be
mentioned in writ.Concurrent writs,
in what cases allowed.

Affidavit to obtain leave.

Order thereon.

Service on agent
authorised to bring
actions.

Service on other agents.

s. 11. In case of service out of the jurisdiction the writ shall require the defendant to enter an appearance to the suit within such time as the Court shall have ordered.

s. 18. The same as English O. vi. r. 2.

s. 32. *id:* O. xi. r. 1,
omitting the notice of writ in lieu of writ.

s. 33. *id:* O. xi. r. 3.

s. 34. Any order giving leave to effect such service shall prescribe the mode of service: [remainder the same as O. xi. r. 4.]

s. 35. If the defendant has in Jamaica an agent authorised to bring actions for him the Court may order service of the writ and subsequent proceedings to be made upon the agent. The plaintiff may elect to proceed under this or under s. 32.

s. 36. If the defendant carries on in Jamaica any estate or business and has no known agent on whom service can be ordered under s. 35, and the action is one which in the opinion of the Court or Judge may properly proceed under this section, service

Chapter II.

of the writ and subsequent proceedings may be ordered on any servant or agent in Jamaica carrying on the estate or business, in such manner and in such place as to the Court or Judge seems fit. The Court may order advertisements in newspapers if it thinks fit. The plaintiff may elect to proceed under this or under s. 32. The service under ss: 35 & 36 is equivalent in all respects to substituted service on the defendant under s. 23.

*20 Vic: c. 19.*PROOF OF FOREIGN
JUDGMENTS.

s. 5. The same as English Act, 14 & 15 Vic: c. 99, s. 7.

4 G. II. c. 5.

s. 3. Exemplifications of wills in the United Kingdom and the Colonies, and sent over after probate under Seal of the Court and afterwards recorded in the Island, shall be sufficient evidence and read and allowed as such, of the title of the parties claiming any lands or estates under such wills so exemplified in all Courts of law or equity.

Validity of probates of
United Kingdom and
Colonies.*34 G. III. c. 11.*

s. 2. The probate of any will taken before any officer authorised to take probate of wills in any of the United States of America, and exemplified under the Seal of the State where probate has been taken, shall be as effectual as if probate had been taken before the Ordinary of the Island.

of United States.

28 Vic: c. 14.

The reasons of judgments delivered in the Courts of the Island are to be preserved and recorded in a book for reference.

Reasons of judgments to
be preserved.**TURKS AND CAICOS ISLANDS.**

Annexed to Jamaica by the Turks and Caicos Islands Act, 1873. (36 Vic: c. 6. U.K.)

Ord: No: 9 of 1852.

s. 8. A copy of the process is to be left at the last abode of a defendant once resident, but who has been absent over twelve months; and an affidavit must be made that the defendant was absent twelve months previous to issuing the writ, and that the cause of action arose previous to his departure.

Service on absent
defendant.

Chapter II.

BRITISH HONDURAS.*No: 14 of 1879*

adopts with slight variations the English Judicature Act.

No: 15 of 1879.

The Code of Civil Procedure, based upon the English rules and orders.

SERVICE OUT OF THE
JURISDICTION.

Time for appearance to be
mentioned in writ.

Concurrent writs.

In what cases allowed.

Affidavit to obtain leave.

Order thereon.

s. 11. In case of service out of the jurisdiction or out of the Colony, the writ shall require the defendant to enter an appearance within such time as the Court shall have ordered.

s. 18. The same as English O. vi. r. 2.

s. 32. *id:* O. xi. r. 1.
omitting the notice of writ in lieu of writ.

s. 33. *id:* O. xi. r. 3.

s. 34. Any order giving leave to effect such service shall prescribe the mode of service: [remainder the same as O. xi. r. 4.]

BRITISH GUIANA.

[including DEMERARA, ESSEQUIBO and BERBICE.]

Roman-Dutch law
prevails.

The Roman-Dutch law prevails in the Colony, having been originally in the possession of the Dutch West India Company. (*Steele v. Thompson*, 13 Mo: P. C. C. 280.)

That which was the law of Holland in Grotius' time is to be taken as the Roman-Dutch law in force in the Colony. (*Norton v. Spooner*, 9 Mo: P. C. C. 103.)

[See also Cape of Good Hope, p. 68.]

Ord: 26 of 1855.

Service on absent
defendant.

s. 25. When a defendant is absent from the Colony, service of the writ is to be made upon the defendant's attorney if he has one; if not, it is to be left at his last known residence or last elected domicile, and published in the official gazette.

SERVICE OUT OF THE
JURISDICTION.

As to actions against
British subjects and
foreigners.

BAHAMAS.*Consolidated Statutes, No: 5.*

ss: 13 . 14. The same as English C. L. P. Act, 1852, ss: 18 . 19.

35 Vic: c. 6.

Chapter II.

s. 13. Documents legally admissible in any Court in England are admissible to the same extent and for the same purpose in the Courts in the Bahamas.

2 G. IV. c. 32.

Probates of wills exemplified under the Seal of the United States shall be valid as if taken before the Ordinary of the Island. Validity of U.S. probates.

TRINIDAD.

The Island was taken from the Spanish in 1797. The Spanish Civil Law prevails subject to the Acts of the Executive Government, Orders in Council and Imperial Statutes applying to the Colony. Spanish law prevails.

The Judicature Ordinance [No: 28 of 1879.]

adopts the English Judicature Act, with the orders and rules.

SERVICE OUT OF THE JURISDICTION.

In what cases.

No: 12 of 1855

introduced the Imperial Acts passed up to that year to amend the Law of Evidence; including the Statute 14 & 15 Vic: c. 99, ss: 7. II.

PROOF OF FOREIGN JUDGMENTS.

WINDWARD ISLANDS.

BARBADOS.

Consolidated Statutes, No: 40. [1755.]

provides for service of process against persons absconding or avoiding service, or those who, having estates in the Island, reside beyond the seas and cannot be served. Service on absent defendants.

The affidavit and copy of the order made is to be put up within 14 days at the offices of the Registrar, Secretary and Clerk of the Courts, and to be published in the Gazette. In default of appearance the plaintiff's bill may be taken *pro confesso*, and the Court may decree upon it. The plaintiff is to give security for repayment in case the defendant appears within 7 years, in which case he is to be served with a copy of the decree, which he is entitled to reopen within 6 months. Publication of order.

Decree may be reopened within 7 years.

If the defendant have an attorney in the Island, the service may be upon him; if he refuse to accept it, the Court may appoint one to accept service for him.

Chapter II.

*Consolidated Statutes, No: 334, [1859.]*Common Law Procedure
Act.

provides for the procedure of the Courts.

SAINT VINCENT.

*Court Act, 1860.*Service on absent
defendants.
With power of attorney.

s. 16. If the absent defendant have an agent with a power of attorney recorded in the Secretary's or Registrar's office, the service of the writ with a copy of the declaration may be made upon him, or upon some person residing at his most usual place of abode :

Without power of
attorney.

if he has no such agent, the service is to be at the defendant's last place of abode, upon a member of his family or a servant :

With property.

if he have freehold or leasehold property in the Island, the writ and copy of declaration may be affixed for service upon any part thereof :

Without property.

if he have none, the same may be nailed to the door of the Court house in Kingston :

Actual residence.

an affidavit must be made of *bonâ fide* attempts to serve the writ : but such service can only be made on persons who have actually been resident, and who possess some real or personal property (however small) in the Island.

PROOF OF FOREIGN
JUDGMENTS.*Act No: 99.*

s. 7. The same as English Act, 14 & 15 Vic: c. 99, s. 7.

GRENADA

*[and the GRENADINES].**Consolidated Statutes, No: 133. [1874.]*Service on absent
defendants.

s. 12. Service of the writ is to be made upon the defendant's attorney if he has one ; if not, it is to be left with a servant at his last abode in the Colony: if this is impossible, the writ with a copy of the declaration is to be fixed on any freehold or leasehold belonging to the defendant within the jurisdiction ; and if this is impossible then the same are to be nailed on the door of the Court house in S. George.

*Consolidated Statutes, No : 134. [1874.]***Chapter II.**

s. 167. Probate of foreign wills exemplified under Seal of the Foreign Court shall be *prima facie* evidence of the original will. Foreign probates.

TOBAGO.

A charter was granted to the Island 7 October, 1763.

The Act of Tobago, November 1841, provided that the English Common Law and Statutes of that date suitable to the Colony should be in force in the Island.

[*cf: The Colonial Bank v. Warden*, 5 Mo: P. C. C. 340.]

No : 10 of 1879

reconstituted the Supreme Court of the Island and adopted the English Judicature Act.

No : 11 of 1879

established a Code of Civil Procedure, based upon the English rules and orders. SERVICE OUT OF THE JURISDICTION.

The service of notice of writ in lieu of writ is omitted. in what cases.

No : 14 of 1869

adopted the English Law of Evidence, including the Act, 14 & 15 Vic: c. 99, ss: 7 & 11.

PROOF OF FOREIGN JUDGMENTS.

SAINT LUCIA.

The French law prior to 1803 prevails in the Island.

French law prevails.

[As to the construction of French ordinances, see Quebec, p. 48.]

The Civil Code Ordinance, 1876.

s. 14. All British subjects enjoy the same civil rights as natives of the Colony except as set forth in the rules respecting domicile. Rights of British subjects.

s. 20. Aliens though not resident in the Colony may be sued in its Courts for the fulfilment of obligations contracted even in foreign countries. Actions against non-resident aliens: in what cases.

s. 21. Any inhabitant of the Colony may be sued in its Courts for the fulfilment of obligations contracted in foreign countries, even in favour of a foreigner. Actions against inhabitants: in what cases.

F

Chapter II.

Security for costs.

PROOF OF FOREIGN
JUDGMENTS.

Judgments.

Wills and probates.

Certified copies.

Judicial hypothec.

s. 22. A non-resident plaintiff is required to give security for costs, unless he has realty in the Colony of not less value than £100, free of all charges.

s. 1152. The certificate of any British or Foreign Executive Government, and the original documents and copies of documents hereinafter enumerated, executed out of the Colony, are *prima facie* evidence of the contents thereof, without any proof of the seal or signature upon them, or of the authority of the officer granting the same; *viz.*—

i. A copy of any judgment or other judicial proceeding of any Court out of the Colony, under the Seal of such Court, or under the signature of the officer having the legal custody of the record of such judgment or other judicial proceeding.

ii. A copy of any will executed out of the Colony under the Seal of the Court wherein the original will is of record, or under the signature of the Judge or other officer having the legal custody of such will, and the probate of such will under the seal of the Court.

iii. A copy certified by the prothonotary of the copy recorded in his office of any such will and probate at the instance of an interested party and by the order of a Judge of such Court. The copy of a probate so recorded is also received as proof of the death of the testator.

* * * *

These copies, probates, etc., are held to be genuine unless impugned, and the onus of proof lies upon the party impugning them. The manner of impugning these documents is set forth in the Code of Civil Procedure. [*cf.* Quebec Civil Code, s. 145, p. 48.]

s. 1923. Judicial hypothec results from judgments of the Colonial Courts. It also results from judicial suretyship, and from any other judicial act creating an obligation to pay a specific sum of money.

[There is no special mention of foreign judgments as in the Code Napoleon].

The Code of Civil Procedure, though promulgated the same year as the Civil Code, 1876, has not yet been received at the Colonial Office.

LEEWARD ISLANDS

Chapter II.

[Including by the Leeward Islands Act, 1871 (34 & 35 Vic: c. 107), ANTIGUA and BARBUDA (Act of Antigua, Sept: 1858, confirmed, 22 & 23 Vic: c. 13) MONTSERRAT, SAINT CHRISTOPHER and ANGUILLA, NEVIS, and DOMINICA, with their respective dependences, and the VIRGIN ISLANDS:—TORTOLA, VIRGIN SORDA, and ANEGADA.]

No: 2 of 1880 [repealing No: 7 of 1876]
adopted the first part of the English Judicature Act, 1873.

No: 8 of 1876
established a Code of Civil Procedure based upon the English rules and orders.

s. 11. In case of service out of the jurisdiction the writ shall require the defendant to enter an appearance to the suit within such time as the Court shall have ordered.	SERVICE OUT OF THE JURISDICTION.
s. 18. The same as English O. vi. r. 2.	Time for Appearance to be mentioned in writ.
s. 32. <i>id:</i> O. xi. r. 1.	Concurrent writs.
omitting the service of notice of writ in lieu of writ.	In what cases allowed.
s. 33. <i>id:</i> O. xi. r. 3.	Affidavit to obtain leave.
s. 34. <i>id:</i> „ r. 4.	Order thereon.

ANTIGUA.

Act No: 33. [31 G. III.]

s. 59. Probate of wills under Seal of competent Courts of Her Majesty's dominions, when recorded in the Secretary's office, shall be good evidence to prove personal bequests in the Island: and when recorded in both the Secretary's and Registrar's offices, to prove devises of realty in the Island, saving always the right of all and every person to invalidate, disprove or set aside the same wills by lawful or equitable causes.

NEVIS.

Act No: 12. [6 G. II.]

s. 24. Probates of foreign wills exemplified under Seal of the Foreign Court shall be *prima facie* evidence of the original will.

Chapter II.

BERMUDA.*No : 8 of 1831.*

Service on joint contractors.

s. 2. Service of writ on one or more joint contractors to be good service on all, though some are out of the jurisdiction.

No : 3 of 1853.

PROOF OF FOREIGN JUDGMENTS.

ss: 7 . 8. The same as English Act, 14 & 15 Vic: c. 99, ss: 7 . 11.

V. AFRICAN.**CAPE OF GOOD HOPE**

[including BASUTOLAND and the TRANSKEI Territory, and BRITISH KAFFRARIA (the British Kaffraria Act, 1865, 28 Vic: c. 5).]

Roman-Dutch law prevails.

The Roman-Dutch law prevails in the colony. (*Denyssen v. Mostert*, L. R. 4 P. C. 236; *Aldridge v. Cato*, L. R. 4 P. C. 313.)

Construction of the Law.

The colony was founded in the middle of the 17th century by the Dutch, and they must be assumed to have carried with them the laws of Holland: including the Placaat of the Emperor Charles V., 4th October, 1540. Some of the provisions may have clearly come to an end from their very nature: but the legislature of the colony having power, if it is so minded, to put an end to any part of the ordinances, those parts which remain, however at variance with the principles of similar laws in the United Kingdom, must be enforced, unless they are repugnant to or inconsistent with recent ordinances of the colony. (*Thurburn v. Steward*, L. R. 3 P. C. 478.) [See also British Guiana, p. 62].

Dutch ordinances prior to 1815.

The ordinances passed by the Dutch Governor and Council, who were the sole legislative power in the colony prior to the cession in 1815, form part of the *lex scripta* of the colony. (*Van Breda v. Silberbauer*, L. R. 3 P. C. 84.)

The Acts providing for the administration of justice are No: 21 of 1864, No: 5 of 1879, No: 12 of 1880, but there appears to be no reference in them to service out of the jurisdiction.

Chapter II.

By the Imperial Statute 26 & 27 Vic : c. 35 the laws in force at the Cape of Good Hope for punishment of crimes are extended to British subjects in territories in South Africa not within the jurisdiction of any civilised government.

Criminal laws of Cape
extended to South Africa.

GRIQUA LAND WEST.

annexed to the Cape by Act No : 39 of 1877 : the Proclamation of October 27, 1871, having previously declared that the laws and usages of Cape Colony were to be deemed the laws of the territory, so far as they should not be inapplicable thereto.

[By the Constitution of the Orange Free State, 1854, it was declared that the Roman-Dutch Law should be the Common Law of the State where no other law had been made by the Volksraad. (*Webb v. Giddy*, L. R. 3 App : Ca : 908).]

NATAL.

No : 10 of 1857.

provides for the better administration of justice in the colony, but there is no reference to service out of the jurisdiction.

TRANSVAAL.

The Acts contain no reference to service out of the jurisdiction.

SAINT HELENA.

The Court was constituted by Order in Council, dated 13 February, 1839 : The Acts do not contain any reference to service out of the jurisdiction.

WEST AFRICAN SETTLEMENTS.**SIERRA LEONE AND
GAMBIA.**

The two settlements were united 19 February, 1866, and a Court of Justice was established :

An Order in Council dated 26 February, 1867, regulates the procedure, but there is no reference to service out of the jurisdiction.

Chapter II.

GOLD COAST AND
LAGOS.*No : 4 of 1876*

introduced with slight modifications the English Judicature Act: the procedure being based upon the English rules and orders.

SERVICE OUT OF THE
JURISDICTION.

Leave of Court.
Concurrent writs.

Plaintiff out of the
jurisdiction,

to assign place for
service.

Court may require
security in respect of
counter-claim.

Service on British cor-
poration or company.

Service on foreign cor-
poration or company.

Order II., rule 5. Service out of the jurisdiction is to be by leave of the Court.

rule 7. The same as English O. vi., r. 2.

Order VI., rule 1.

Where a plaintiff, on whose behalf or by whom a suit is instituted or carried on, either alone or jointly with any other person, is out of the jurisdiction, or is only temporarily therein, he shall assign a fit place within the jurisdiction where notices or other papers issuing from the Court may be served upon him.

rule 2.

If it shall be made to appear on oath or affidavit to the satisfaction of the Court that the defendant has a *bond fide* counter-claim against such plaintiff which can be conveniently tried by the Supreme Court, it shall be lawful for the Court in its discretion to stay proceedings in the suit instituted by such plaintiff until he shall have given such security to comply with the orders and judgment of the Court with respect to such counterclaim as the Court shall think fit.

Order XI., rule 3.

When the suit is against a British corporation or a company, authorised to sue and be sued in the name of an officer or trustee, the writ or document may be served by giving the same to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company.

rule 4.

When the suit is against a foreign corporation or company, having an office and carrying on business within the jurisdiction, and such suit is limited to a cause of action which arose within the jurisdiction, the writ or document may be served by giving the same to the principal officer, or by leaving it at the office of such foreign corporation or company within the jurisdiction.

Order XI., rule 5.

Chapter II.

Where the suit is against a defendant residing out of but carrying on business within the jurisdiction of the Supreme Court, in his own name or under the name of a firm through an authorised agent, and such suit is limited to a cause of action which arose within the jurisdiction, the writ or document may be served by giving it to such agent, and such service shall be equivalent to personal service on the defendant.

When defendant resides out of but carries on business in Colony.

rule 6. The same as English O. xi., r. 1

In what cases allowed.

omitting the notice of service of writ in lieu of writ.

rule 7. *id*: O. xi., r. 3.

Affidavit to obtain leave

rule 8. *id*: „ r. 4,

Order thereon.

[with this addition.] And the Court may receive an affidavit or statutory declaration of such service having been effected as *primâ facie* evidence thereof.

VI. MEDITERRANEAN.

GIBRALTAR.

By a proclamation, 11 December, 1867, it was declared that the law of England in force on 22 August, 1867, was to be considered the law of the colony.

MALTA, [AND GOZO].

Code of Civil Procedure, 1854.

(Based upon the Italian and French Codes).

s. 749. *Jurisdiction of the Court*: the jurisdiction extends over Assumed jurisdiction

(2). Any individual as long as he is domiciled in the Islands.

(3). Any individual in cases relating to things situate or existing in the Islands.

(5). Parties who have entered into any engagement in the Islands, but only in regard to cases touching such engagement, and when they are present in the Islands.

Chapter II.

- (6). Parties who although they have entered into a contract in some other country have nevertheless agreed to fulfil the engagements in the Islands ; or who have entered into such engagements as must necessarily be carried into effect in the Islands, the parties being present in the same.
- (7). All individuals in regard to any engagement entered into in favour of one of Her Majesty's subjects whensoever the sentence can be carried into effect in the Islands.
- S. 752. (1.) Natural born or naturalised Maltese subjects and all other persons domiciled in the Islands, being absent therefrom are presumed to be resident in their last place of abode in the Islands.
- (2). All other of Her Majesty's subjects and foreigners not being domiciled in the Islands in the cases contemplated in s. 749, (3) and (7) are presumed to be resident in the place in which the property exists, notwithstanding the case be not for such reason within the exclusive competence of the Court of the aforesaid place.
- (7). In general all parties who have procurators or agents in the Islands, and those who are permitted to sue and to be sued by the means of procurators or agents are presumed to be resident in the place in which any one of such procurators or agents resides, when the case is brought forward against such procurators or agents.

SERVICE ON ABSENT
DEFENDANTS.

On Maltese subjects.

On foreigners under
s. 749, (3) & (7).

On agents.

CYPRUS.*Ordinance, 21 December, 1878*

established a High Court of Justice for the Island : the Act to be renewed every year.

English practice in force.

s. 14. The English practice and procedure to be in force ; modified in the same manner as in the Fiji Act, s. 28 (p. 59).

Transfer of cases to or
from Ottoman Court.

s. 108. The Court may order the transfer of any case to or from the Ottoman Court, if in its opinion it ought to have been instituted or would more properly be carried on in the Court to which it is transferred.

VII. EASTERN.**Chapter II.****CEYLON.**

The Roman-Dutch law prevails in the Island. (*Lindsay v. Oriental Bank*, 13 Mo : P. C. C. 401 ; *Dias v. De Livera*, L. R. 5 App : Ca : 123.) Roman-Dutch law prevails.

[As to the construction of Roman-Dutch law, see *British Guiana and Cape of Good Hope*, pp: 62 . 68].

No : 9 of 1852.

PROOF OF FOREIGN
JUDGMENTS.

ss : 8 . 1, the same as English Act, 14 & 15 Vic :
C. 99, ss : 7 . 11.

No : 4 of 1860

regulates the procedure of the Courts, but there is no special mention of service out of the jurisdiction.

HONG KONG.

[Including the KOWLOON Peninsula].

Code of Civil Procedure. [No : 13 of 1873].

cl : viii.

s. 5. In the case of British corporations or companies authorised to sue and be sued in the name of an officer or trustees, service may be effected by giving the writ to any director, secretary or principal officer, or by leaving it at the office of the corporation or company. Service on British company.

s. 6. In the case of a foreign corporation or company having an office in the colony, and the suit is limited to a cause of action which arose within the jurisdiction, the writ may be served on the principal officer, or may be left at the office. Service on foreign company.

s. 7. If the defendant is out of the jurisdiction but carries on business in his own name or in the name of a firm through an authorised agent, and such suit is limited to a cause of action within the jurisdiction the writ may be served on the agent. Service on absent defendant carrying on business in Colony.

s. 8. Service of the writ out of the jurisdiction is allowed when the Court is satisfied by affidavit or otherwise that the suit is limited to a cause of action which arose in the jurisdiction. SERVICE OUT OF JURISDICTION.
In what case.

Chapter II.

Time for appearance.

s. 9. The Court is to fix the time for the defendant's appearance, and give any other directions it may think fit :

The Court will receive any affidavit or statutory declaration of such service having been effected as *prima facie* evidence thereof.

cl: xi.

Defendant to appoint agent.

s. 2. When appearance is entered, an agent in the jurisdiction is to be specified to accept substituted service of all further process while the defendant remains out of the jurisdiction : in default thereof, the Court may proceed with the suit as if no appearance had been entered.

cl: xxix.

Declaration to be served with writ.

s. 2. Where service of the writ is allowed out of the jurisdiction, the Court may order the petition to be filed forthwith, and a copy under seal of the Court to be served on the defendant concurrently with the writ.

No : 2 of 1851.

Suits between Chinese.

The jurisdiction of the Supreme and other Courts of Hong Kong is defined not to extend to civil actions between Chinese subjects when originating out of the colony, unless the defendant has been resident in the colony six consecutive months before the commencement of the action.

PROOF OF FOREIGN JUDGMENTS.

No : 3 of 1852.

s. 5. The same as English Act 14 & 15 Vic: c. 99, s. 7.

MAURITIUS.

[including the SEYCHELLES Islands and RODRIGUES Island].

French law prevails.

The French Code Civile prevails in the Island. (*Lang v. Reed*, 12 Mo: P. C. C. 72; *H.M. Procureur Général v. Bruneau*, L. R. 1 P. C. 169).

[As to the construction of French ordinances, see Quebec, p. 48.]

SERVICE ON ABSENT DEFENDANTS.

No : 30 of 1871.

As to actions against British subjects.

s. 1. The same as English C. L. P. Act, 1852, s. 18. (See Nova Scotia, p. 50.) If the defendant leaves the colony after service of notice without leaving an attorney, all other orders may be left at his last residence.

Chapter II.

s. 2. If a special domicile has been elected by the defendant, not having an attorney or agent, for the particular contract, service may be effected there.

Where special domicile elected.

s. 3. If the defendant has left an agent who is unknown he is to be served as if he had no agent.

Where defendant's agent unknown.

ss: 6. 7. The curator of absent estates may represent and be served for the defendant, but only if the defendant have property in the Island.

Curator of absent estates may represent defendant in actions as to his estate.

Personal service upon the defendant may be ordered where it is shown that the sending in the curator is only a pretext for making that officer defendant in a suit having no direct connexion with the estate.

s. 8. Delays for effecting personal service on the defendant are allowed to the plaintiff as follows:—for

Time allowed.

Réunion	2 months.
Cape, South African Colonies, and Madagascar	4 „
India	4 „
Europe	6 „
China	6 „
Australian Colonies	6 „
United States	8 „
Elsewhere	8 „

s. 10. Where some of the defendants are within, and some out of the jurisdiction, those within may be sued alone.

Defendants within and without the jurisdiction.

The English Act 14 & 15 Vic: c. 99, ss: 7. 11 is in force.

PROOF OF FOREIGN JUDGMENTS.

STRAITS SETTLEMENTS.

[SINGAPORE, PENANG or PRINCE OF WALES ISLAND, AND MALACCA].

The procedure of the Courts is regulated by the Courts Ordinances, Nos: 3, 4 and 5 of 1878, by which the English Judicature Acts were introduced.

No: 3 of 1878.

s. 19. Jurisdiction of the Court.

The English O. xi. r. 1, is set out in full, omitting notice of writ in lieu of writ, after which the section continues:—

SERVICE OUT OF THE JURISDICTION:

Or, if the cause of action arose in the colony, or if the subject

in what cases.

Chapter II.

of the proceeding otherwise falls on general principles of international law or comity, to be determined by the law of the colony.

In suits founded on contract, 'cause of action' as used in this section, shall not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction though the contract may have been made elsewhere.

No : 5 of 1878.

Time for appearance.

s. 41. The defendant is to appear within such time as the Court may direct in the case of service out of the jurisdiction.

Concurrent writs.

s. 47. The same as English O. vi. r. 2.

s. 66. i. Service out of the jurisdiction of the colony of a writ of summons may be allowed by the Court in all cases in which the Court has jurisdiction, under s. 19 of Ord : No. 3 of 1878.

Affidavit to obtain leave :

ii. The same as English O. xi. r. 3.

order thereon.

iii. *id.* „ r. 4.

[Notice of service in lieu of service is not provided for].

Form 7. The same as Form 2 in Part I. of Appendix A.

Defendant's appearance.

s. 67. The defendant within the time allowed for appearance shall cause an appearance to the suit to be entered for him in the Registrar's office in the settlement in which the writ was issued.

Address for service.

s. 70. The defendant appearing in person if residing out of the jurisdiction is to give an address for service within two miles of the Court House in the settlement in which the writ was issued.

Jurisdiction in criminal cases.

The Straits Settlements ceased to be part of India by the Imperial Statute 29 & 30 Vic: c. 115; and by 37 & 38 Vic: c. 38, the jurisdiction of its Courts in criminal cases was extended to offences committed out of the colony at any place in the Malayan Peninsula extending southward from the 9th degree of north latitude, or in any Island lying within twenty miles from the coast thereof by any of Her Majesty's subjects or by any person being a subject of any of the native states in the said Peninsula south

of the said 9th degree of north latitude, but who is at the time of his committing such crime or offence resident in the said colony or who has been so resident within six months before the commission of such crime or offence.

PENANG (or PRINCE OF WALES ISLAND).

The law of England, having regard to the Royal Charters granted to the East India Company in 1807, 1826, and 1855, is to be taken to be the law of Penang so far as it is applicable to the circumstances of the place, and modified in its application by these circumstances. English statutes therefore in their nature inapplicable to Penang are not introduced along with the general law of England. In applying the rules of English law, regard should be had to the habits and usages of the various people residing in the colony.

The English rule against perpetuities, being founded upon public policy, as also the exception to the rule in favour of charitable uses, has passed into the law of the colony. (*Teap Cheah Neo v. Ong Cheng Neo*. L. R. 6 P. C. 381).

LABUAN.

The Imperial statute 29 & 30 Vic: c. 115, which separated the Straits Settlements from India treated Labuan as one of the settlements: in the Colonial Office it is not so treated. There is some doubt therefore whether the Straits Settlements Judicature Acts, 1878, apply to this colony.

The ordinances exist only in MS: there are two relating to the procedure of the Courts: No: 2 of 1850 and No: 3 of 1851.

No: 2 of 1850.

s. 7. The Court shall have cognizance of all actions or suits which shall or may arise against any person or persons who shall be resident within the colony or its dependencies, or who shall have any debts or estate real or personal within the same, and against the executors or administrators of the same.

Chapter II.

VIII. MISCELLANEOUS.

CHANNEL ISLANDS.

JERSEY.

The law of Jersey is based upon *Le Grand Coutumier du Pays et Duché de Normandie*; but it is in a state of great confusion, as was shown by the Report of the Royal Commission in 1861, and it has been found impossible to present any clear idea of the law of the Island bearing upon the subjects under consideration.

‘The Reformed Customs of the Duchy of Normandy are written illustrations, written evidences, authoritative declarations of the unwritten Common Law or custom of the country, and can be looked at as evidence of what the old law was, just as Coke upon Littleton would be looked at as evidence in Maryland or Virginia of what the Common Law of England was, unless it can be shown that some new principle had been introduced by legislative or other sufficient authority in the Duchy subsequent to the separation.’ (James, L.J., *La Cloche v. La Cloche*, L. R. 4 P. C. 325).

GUERNSEY.

[including *ALDERNEY*, *SARK*, and *HERM.*]

The law of Guernsey and its dependencies is similar to the law of Jersey.

ISLE OF MAN.

Act of Tynwald. 27 Jan: 54 G. III.

‘An Act for the more easy recovery of debts contracted out of the limits of the Isle of Man.’

Whereas it is expedient that foreign debts shall be recoverable in the said Isle in such and the like manner as debts contracted within the same, after the promulgation of this Act.

Chapter II.

All debts contracted out of the limits of the Isle of Man shall be recoverable in the said Isle in such and the like manner, to all intents and purposes, as if such debts had been contracted between the same parties within the limits of the said Isle: save and except as to all cases of debts or penalties due to the Crown, and as to all cases of persons who have fled from their bail, in any part of Great Britain and Ireland, leaving such bail charged or chargeable there; and also, save and except as to all cases of persons who have committed offences against the bankrupt laws of Great Britain or Ireland.

Foreign debts recoverable in same way as insular debts.

And whereas it would tend still further to facilitate the recovery of foreign debts, if the orders, judgments and decrees of the Courts of Great Britain and Ireland were to be recognised in the Isle of Man, be it enacted that

In all cases where any order, judgment or decree shall have been pronounced against any person or persons in any action or suit in any of the Courts of Great Britain or Ireland, for the payment of any debt, damage, costs, sum or sums of money, it shall and may be lawful for the Court of Chancery of the Isle of Man, upon the production of an office copy of such order, judgment or decree, and upon such affidavit or affidavits being made as required by the law of the said Isle, in order to obtain an action or process of arrest, to issue and grant the usual action or process of arrest against such person or persons as aforesaid; and such office copy shall be deemed *prima facie* evidence of the debt or damage therein mentioned, upon the trial or final hearing of such action.

Execution may issue on judgment of U. K.

The practice of the Courts in the Island is regulated by 'The Courts Amended Procedure Act, 1876,' but there is no provision made in this Act for service on absent defendants.

Evidence Act, 1871.

s. 19. The same as English Act 14 & 15 Vic: c. 99, s. 7.

PROOF OF FOREIGN JUDGMENTS.

FALKLAND ISLANDS.

[including SOUTH GEORGIA.]

The English Act 14 & 15 Vic: c. 99, ss: 7 . 11, is in force.

cf: *The Falkland Islands Co: v. R.* (2 Mo: P. C. C: N. S. 266).

PROOF OF FOREIGN JUDGMENTS.

HELIGOLAND.*[including SANDY ISLAND].**No : 7 of 1864*

adopted the Civil Code of Schleswig-Holstein (1864).

ASCENSION ISLAND.

A small island in the South Atlantic under the charge and within the jurisdiction of the Admiralty.

CHAPTER III.



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EUROPE.

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ABBREVIATIONS.

J. D. I. P. —Journal de Droit International Privé.

R. D. I. —Revue de Droit International.

France and Italy among the nations of Europe have devoted the greatest attention to the subject of Foreign Judgments, as will be seen by the numerous extracts from the Codes. But the continental law as expounded by the Courts even of these two countries seems to be in a most vague condition and consequently very difficult to formulate. We however come across three new features—Reciprocity, Treaties and Rogatory Letters.

Many countries still insist on reciprocity as a condition precedent to entertaining a judgment emanating from a foreign tribunal: and this is doubtless correct, for reciprocity lies at the root of the subject, it is the foundation of the comity upon which the whole fabric of the theories rest: but it is merely the inception of that comity.

Chapter III.

distinguished from
Comity.

Reciprocity can only exist between two individuals of the family of nations; comity is the rule for the guidance of the whole family, based upon the hypothesis that the individual members have already agreed each with each to do a certain thing: comity then ordains that that thing shall be done for the benefit of a sister nation quite irrespective of the course which might possibly be adopted by that nation when the positions are reversed.

Treaties.

Treaties however are a step beyond comity, and in this respect England is behind other States, having up to the present time entered into no treaties on the subject. So far back as 1787 we find a treaty in existence between France and Russia: the most recent is that between France and Switzerland concluded in 1869, which is noticed p. 98.

These Treaties replace the comity already existing by providing that executory force shall be given in either country to the judgments of the other: and further they expressly define the power of review reposed in the Court to which application is made, that is the defences which may be raised in the action on the judgment are clearly laid down. These treaties have not at present however gone the length of allowing execution to issue on the judgment by the simple process of registering it, nor have they reduced the defences to a minimum: the nations of Europe seem unable to repose sufficient confidence in each other's tribunals; in process of time they may arrive at it, meanwhile we have endeavoured to show that this complete confidence should exist because it is the legitimate consequence of the doctrine of obligation and comity.

M. ASSER's opinion.

M. Asser (R. D. I. P. 1875 p. 388) writing with reference to the Franco-Swiss Treaty has expressed the same view:—'Nous croyons 'que le *pareatis* doit être accordé sans examen préalable, soit de 'la compétence du Tribunal qui a rendu le jugement, soit des 'formalités de procédure, soit pour vérifier si le juge étranger a 'appliqué la loi applicable d'après les règles du traité.'

M. FIORE's opinion.

It may not be inappropriate to notice here the theory put forward by M. Fiore in his work 'Sulle sentenze e sugli atti nei 'paesi stranieri, com e siano efficaci e come si eseguiscano' (Pisa, 1874). Foreign judgments are enforced not owing to comity, nor to reciprocity, nor to a fiction considering all countries united in

one for this matter, but to the existence of a '*société de droit entre les nations.*'

Chapter III.

Rogatory letters (*commission rogatoire*) are intended to replace a formal action on a foreign judgment in another country; they emanate, at the instance of the party, from the tribunal whence the judgment comes and are addressed to the tribunal whose assistance is invoked. The form is sometimes provided in the Treaty, as in the case of Bolivia and Peru (p. 151).

Rogatory letters.

Rogatory letters are also occasionally used as in Germany, in order to effect service of a writ out of the jurisdiction.

With very few exceptions there are no traces of distinct legislation existing in the Colonies of the European States, and it may be taken generally that these Colonies have the same laws as, or a Code almost identical with the Code of their mother country. Thus the Codes of Civil Procedure of Cuba and Puerto-Rico are based upon the Spanish Code of 1855.

Law in the Colonies of Continental nations.

In some cases however not Colonies but Provinces have different laws: thus in Spain the Provinces of Aragon, Biscay, Catalonia, Majorca and Navarre have a Common Law different from the rest of the kingdom: such differences however will hardly effect the subject with which we are dealing.

AUSTRO-HUNGARIAN EMPIRE.

AUSTRIA.

[PAUL LOMBARD. J. D. I. r. 1877. p. 210.]

[including UPPER and LOWER AUSTRIA, BOHEMIA, BUKOWINA, CARINTHIA, CARNIOLA, DALMATIA, GALICIA, MORAVIA, SALZBURG, SILESIA, STYRIA, TYROL and VORARLBERG, and the COAST DISTRICTS:—GORZ, GRADISCA, ISTRIA, TRIESTE.]

The general rules of the Austrian Courts as regards foreign judgments are based upon the same principles as the Italian.

The law of 20 November 1852 gives the Courts power to render foreign judgments executory in the Empire.

EFFECT OF FOREIGN JUDGMENTS.

The defences in an action on a foreign judgment may be directed to the following points:—

Defences.

- i. The competency of the tribunal.
- ii. The regularity in form and procedure.
- iii. Its effect as *res judicata* in its own country.

Chapter III.

further, it will not be enforced if it is manifestly unjust; and reciprocity is essential.

Hungarian judgments.

With Hungary the fullest reciprocity exists: the judgments of the two countries being mutually enforced by rogatory letters.

Civil Code. [for the German Hereditary Provinces].

[WINIWATER'S TRANSLATION. 1865.]

s. 35. A business undertaken by a foreigner in this state, by which he gives rights to others, without binding them mutually, is to be judged of either according to this code, or according to the law of the country, of which the foreigner is a subject, according as the one or the other law mostly favours the validity of the business.

s. 36. When a foreigner in this country enters into a mutually binding business with a citizen, it is to be judged of without exception, according to this code. But, in so far as the foreigner concludes it with a foreigner, it is only then to be considered according to this code if it is not proved, that at the conclusion of the business another law has been taken into consideration.

s. 37. If foreigners enter into a business in a foreign country with foreigners, or with subjects of these states, they are to be judged of according to the laws of the place, where the business has been concluded; when at the conclusion another law has evidently not been declared decisive.

PROOF OF FOREIGN
JUDGMENTS.

The certificate of the Austro-Hungarian Consul is required to verify the authenticity of the record of the judgment.

[DR. ALBERT ALEXV.]

HUNGARY.

[including CROATIA, FIUME, SLAVONIA and TRANSYLVANIA.]

EFFECT OF FOREIGN
JUDGMENTS.

The Hungarian Code requires the strict observance of reciprocity in enforcing the judgments of another country: they will be enforced to the same extent as Hungarian judgments are enforced in that country.

Austrian judgments.

With Austria the fullest reciprocity exists: the judgments of the two countries being mutually enforced by rogatory letters.

English judgments.

As regards English judgments it is believed that evidence and counter-evidence is admitted, and judgment given on the merits of the case according to Hungarian law.

Code of Civil Procedure. 1868.

Chapter III.

Every absent defendant ought to be represented by a *curator litis*, who is nominated by the Court, and obliged to plead and represent the interest and right of the absent party in the same manner as a barrister instructed by a party to a suit. This *curator absentis* is usually nominated out of the number of barristers who plead regularly in the Court in which the action is to be heard. Without such curator no proceeding can take place against an absent defendant. The curator will be nominated in the following cases :—

SERVICE ON ABSENT DEFENDANTS

Curator litis to be appointed.

- i. If the plaintiff proves in his bill of complaint or action, by a certificate of the competent authority (usually a police officer) that the residence of the defendant could not be ascertained : in what cases.
- ii. If the defendant at whose door the summons was nailed has neither family nor servants to whom the contents of the writ could be explained :
- iii. If the defendant is out of Hungary and the receipt of the summons is not acknowledged in due time.

The Court will nominate the curator in its first order which fixes the time of hearing, and it will order him to accept service of the writ.

Notice of the summons should be inserted in the Official Gazette, and if necessary in foreign newspapers, and also posted in the Hall of the Court. Such publication should mention the cause of action, the day fixed for hearing, the first order of the Court, and the name of the curator appointed. The absent defendant is admonished either to give the necessary information to the curator for the conduct of the case, or to appoint another barrister before the time fixed for hearing. Publication of summons.

The plaintiff is required to advance the costs incurred by the appointment of the curator ;—he has also to indicate in his bill of complaint the residence of the defendant or the place where he will most probably be found : and if he wilfully or maliciously conceal the defendant's address, all the proceedings will be null and void.

In actions relating to real property in Hungary, where the owner is an Englishman who has never resided in the country, if no agent authorised to accept service can be found, the writ Actions relating to realty.

Chapter III.

should be sent through the Hungarian Minister of Justice to the Austro-Hungarian Ambassador in London for service on the defendant. If the receipt is not acknowledged in due time the order of the Court and nomination of curator above-mentioned will be inserted in the Official Gazette and in some English paper.

to personalty.

In personal actions foreigners may be sued before the Hungarian Courts, and any goods or money due within the jurisdiction may be seized.

Foreign companies,
when they may be sued.

Foreign companies trading in Hungary but having their principal place of business out of the country may be sued through their representative or agent wherever resident: if there be no agent, wherever their landed property is situate: and if there be no such property, wherever the contract was entered into out of which the cause of action arises.

Assumed jurisdiction.

The Hungarian Courts assume jurisdiction over foreigners resident in Hungary for every obligation incurred by them during their residence: and also in respect of contracts entered into by them in a foreign country before their arrival in Hungary, unless it is evident from the nature of the case or from some special agreement that another Court has exclusive jurisdiction in the matter. The defendant may in such action plead to the jurisdiction.

[LEON HUMBERT, J. D. I. P.
1877. p. 339.
P. NAMUS, *id.* p. 381.
F. LAURENT, *id.* p. 496.]

BELGIUM.

[including LUXEMBOURG.]

Civil Code.

The Code Napoleon was formerly in force in Belgium: it has however been republished with certain modifications.

s. 14 is now omitted.

EFFECT OF FOREIGN
JUDGMENTS.

Code of Civil Procedure. 1877.

Treaties.

s. 10. The Courts of First Instance have cognisance of judgments given by foreign judges in Civil and Commercial cases.

If a Treaty on the basis of reciprocity be in existence between Belgium and the country in which such judgment has been given, the examination shall bear only on the five following points:—

i. Whether the judgment contain anything contrary to public order according to the principles of public order in Belgium:

ii. Whether the judgment has obtained the force of *res judicata* according to the law of the country in which it was given :

iii. Whether the copy of the judgment produced be duly authenticated according to the law of the said country :

iv. Whether the defendant's rights have been duly respected :

v. Whether or no the foreign court be the only competent court by reason of the nationality of the plaintiff.

Thus it will be seen that even if there exist a treaty with the foreign state a judgment of that state is not received with very great favour :—but if there is no treaty, the foreign judgment does no more than fix the competency of the Belgian tribunal, which may then make a complete revision of it.

The fifth section of the Code is intended to cut directly against the assumed jurisdiction of foreign courts.

The Commission of the Chambers appointed to report upon the Code said that they could not attach an absolute presumption of justice and truth to every judgment proceeding from any particular tribunal of Europe, America, Asia or Africa ; and that the right must be reserved to accord the force of *res judicata* to the decisions of the tribunals only of those countries whose judicial organization offers sufficient guarantees.

Dalloz severely criticises this 'délance dans l'impartialité des juges étrangers.'

[This remark of the Commissioners much resembles a repealed section of the Code of Texas State, which having provided that no action should be brought upon any foreign judgment, thus concluded:—'This Republic not being bound by any international law or comity to give credence or validity to the adjudication of foreign tribunals whose measures of justice and rules of decisions are variant and unknown here.']

s. 52. Foreigners may be cited before Belgian tribunals, either by a Belgian or a foreigner, in the following cases :—

SERVICE ON ABSENT
DEFENDANTS.
in what cases.

i. In actions relating to immoveables in the kingdom.

ii. If they are domiciled or resident in the kingdom ; or if they have elected to be domiciled in it.

iii. If the obligation giving rise to the cause of action arises, has been or will be executed in Belgium.

iv. If the action relates to an open succession in Belgium.

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v. If the action relate to questions as to the validity or continuance of seizures made in the kingdom, or as to any other provisional or conservatory measures.

vi. If the cause of action is collateral to a suit already pending before a Belgian tribunal.

vii. If it be a suit to render a foreign judgment or deed executed abroad executory in the kingdom.

viii. If it relate to a bankruptcy started in the kingdom.

ix. If it relate to a guarantee or to a counterclaim when the original demand is pending before a Belgian tribunal.

If there are several defendants when one of them is domiciled or resident in Belgium.

The foreigner so summoned may not plead to the jurisdiction.

s. 53. The plaintiff may bring his action before the Court of his domicile.

Generally as to pleading to the jurisdiction in the case of a foreign defendant reciprocity is demanded.

Reciprocity.

s. 54 establishes the rule of reciprocity.

Bankruptcy of foreigners.

A foreigner made bankrupt in the kingdom is presumed to decline to accept the jurisdiction of the tribunals.

Loi du 18 Mai 1873.

Foreign companies.

s. 128. Joint-stock companies and other commercial associations industrial or financial formed and having their chief office in a foreign country may carry on their business and sue in Belgium.

s. 129. All companies whose principal office is in Belgium are subject to the law of Belgium, although the deed of incorporation was entered into in a foreign country.

s. 130. The sections relating to the publication of deeds and balance sheets [*cf.* ss: 9—12. 65. 104], and section 66 ('Société Anonyme' to be always affixed plainly and in full after the title of the company) are applicable to foreign companies who may found a branch office or any base of operations in Belgium.

It appears from the report of M. Pirmez that the Commission upon this law considered that when foreign companies, made and established abroad, entered into any transaction in Belgium or were concerned in any action there, the Belgian law ought to treat

these '*individualités morales*' as it treats ordinary physical beings, that they should be allowed to enter into contracts and to plead, their existence or incapacity being discussed according to the law of their own country.

The Belgian law not having been responsible for the existence of these companies this enquiry should not in such cases be undertaken; those who mix themselves up with them by entering into contracts know that they are dealing with an exotic creation; and they must recover abroad upon their engagements and their guarantees.

DENMARK.

[A. HINDENBURG.

M. GOOS,
J. D. I. P. 1880. p. 368.]

[*Including the Peninsula of JUTLAND and the Islands BORNHOLM, FÜNEN, LOLLAND and SEELAND. Colonies—GREENLAND, ICELAND, FAROE or HORSE ISLAND; and in the West Indies, SANTA CRUZ, SAINT JOHN and SAINT THOMAS.*]

The principles of Danish and Norwegian jurisprudence are framed chiefly upon the opinions of Anders Sandø Orsted, who wrote in the early part of the present century—['*Eunomia*,' vol: iv. pp: 1—161. 1802—10].

The competency of the foreign tribunal will be examined according to the rules of Danish Law.

EFFECT OF FOREIGN
JUDGMENTS.

The Court will also enquire whether the defendant had the guarantees for a fair judgment which are considered necessary in Denmark.

If these tests are satisfied the judgment will not be executed directly but it will be considered a binding contract between the parties.

Defences already rejected by the foreign court will not be received: but pendency of appeal or satisfaction of the judgment may be set up.

A foreign judgment of the place where a contract was entered into, and where the defendant has not pleaded to the jurisdiction of the tribunal will be enforced.

The Danish Courts do not consider the question of reciprocity.

There is no express legislation upon the subject at present,

Chapter III.**Defences.**

but a new Code is in course of preparation. The defences admitted by the Court are,

i. That, according to Danish law, the defendant was not in the particular case subject to the jurisdiction :

[thus where the Court has assumed jurisdiction, in a manner not recognised by Danish law, as for example under s. 14 of the Code Napoleon, the judgment will not be recognised].

ii. That the judgment is not executory at home, and that it is subject to appeal :

iii. That the judgment if executed would violate the principles of Danish law.

Provisions of proposed new Code.

It is believed that the new Code of Civil Procedure will be laid before the Rigsdag this year. The draft of it contains the following provision.

s. 436. Execution may be effected in virtue of judgments and decrees given by foreign tribunals or by other foreign authorities, competent to do so, provided

(a) That the party could, according to Danish law, have been rendered amenable in the particular case to the tribunal or foreign authority.

(b) That the judgment or decree is executory in the foreign state according to the laws of that country.

(c) That the judgment or decree does not relate to an object the execution upon which by means of the executive power of the state would infringe rights or principles which are inviolable according to the Danish law.

A Royal decree will indicate the States which, as regards the execution of judgments and decrees, shall be included in this section.

SERVICE ON ABSENT DEFENDANTS.***Code of 1683. Book 1. Chap: 2.***

s. 19. The principal rules as to the jurisdiction of the Court appear to be as follow :—

A man can only be sued in the Courts of his domicile. Temporary residence or having an office within the jurisdiction is not sufficient. But if an agreement has been entered into in the jurisdiction to be executed there before the defendant leaves it, he may be sued provided he is residing within the jurisdiction at the time of service of the writ.

s. 20. If the defendant appears and does not plead to the jurisdiction of the tribunal, he will be taken to have expressly waived any objection.

Foreigners in Denmark having goods in the country which can be seized in execution may be sued in all cases—(Law of 30 November, 1821). *Saisie-arrêt.*

The suit begins with a 'saisie-arrêt' on the goods, and a writ served on the possessor, who is presumed to have commercial relations with the owner and to be willing to defend his interests.

The judgment does not condemn the defendant to pay the debt, but only authorises the plaintiff to sell the goods or so much of them as will satisfy his claim: and only relates to the actual goods seized.

Foreign companies having only a branch office in Denmark cannot be sued there: they must be sued in the country where the chief office is situate. The companies on the other hand are allowed to sue Danish subjects in the courts of the country, and are not required to give security for costs. *Foreign companies.*

There is a Treaty with Sweden for the mutual enforcement of judgments—1 July, 1861. *Swedish judgments.*

FRANCE.

[Colonies :—*CORSICA, ELBA. African—ALGERIA, BOURBON (RÉUNION), part of GOLD COAST and GABOON, SAINTE MARIE, MAYOTTE, NOSSI-BÉ, SENEGAMBIA. American—SAINT BARTHOLOMEW, GUADALOUPE, MARTINIQUE. West Indies—FRENCH GUIANA (CAYENNE), SAINT PIERRE, MIGUELON. Asian—ANTILLES, CHANDERNAGORE, FRENCH COCHIN-CHINA, GOREE, KARIKAL, Northern MADAGASCAR, MAHÉ, ORAN, PONDICHERRY, SENEGAL. Pacific—CLIPPERTON, NEW CALEDONIA, MARQUESAS and LOYALTY ISLANDS. CAMBODGE, TAHITI, TOUAMOTOU, GAMBIER, TOUBOUAI, and the VAVITOU ISLANDS are under the protectorate of France.*]

[M. CLUNET.
M. DE FOLLEVILLE.
*Revue de l'Institut
juridique international
d'Italie*, 1879, pp. 190—
265.]

[Ordinance, 15 January, 1629.

s. 121. Judgments given, contracts or obligations recognised in foreign kingdoms and sovereignties for whatever cause shall have no lien nor receive execution in our kingdom; thus the contracts shall have the effect of simple promises; and notwithstanding the judgments our subjects against whom they may have been given may again contest their rights before our own judges.]

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It is understood that this ordinance has been repealed by the Loi du 30 Ventôse, an xii, article 7. The distinction therefore which has always existed in France between foreign judgments in favour of, and those against French subjects should have entirely disappeared. The Courts however are still uncertain as to what course they intend to pursue.

**SERVICE ON ABSENT
DEFENDANTS.**

in what cases.

Civil Code.

s. 14. A foreigner though not resident in France may be cited before the French Courts to enforce the execution of engagements contracted by him in France with a Frenchman, he may be summoned before the tribunals of France on account of engagements entered into by him with Frenchmen in a foreign country.

s. 15. A Frenchman may be summoned before a French Court for engagements contracted by him in a foreign country though with a foreigner.

s. 16. In all causes, except commercial ones, in which a foreigner shall be plaintiff, he shall be required to give security for costs and damages incident to the suit, unless he possess immoveable property in France of sufficient value to guarantee such payment.

Judicial lien.

s. 2123. A judicial lien arises from judgments . . . but the lien cannot in like manner arise from judgments given in a foreign country, except to the extent to which they have been declared executory by a French tribunal, without prejudice to contrary provisions which may arise from political laws, or from treaties.

s. 2128. Contracts entered into in foreign countries cannot create any lien on goods in France, unless there exist contrary provisions in political laws or treaties.

Code of Civil Procedure.

Mode of service.

s. 69. (8.) Persons who have no known domicil in France shall be served with the writ at the place of their actual residence: If this is not known, the writ shall be fastened to the principal door of the Hall of the tribunal where the action is brought: a second copy shall be given to the Procureur de la République by whom the original must be signed.

(9.) Persons who inhabit French territory beyond the continent,

Chapter III.

and persons who are settled in foreign countries shall be served at the domicile of the Procureur de la République of the tribunal where the action is brought, by whom the original must be signed, and by whom a copy must be sent, in the first case to the Minister of Naval Affairs; in the second case to the Minister of Foreign Affairs.

s. 70. The writ is void for informalities.

s. 73. Certain delays for entering an appearance are allowed according to the residence of the defendant: for England the time granted is one month. Time for appearance.

s. 546. Judgments given by foreign tribunals and documents recognised by foreign officials shall only be capable of receiving execution in France in the manner and in the cases ordained by the articles 2123 and 2128 of the Civil Code.

A foreign judgment is proved by the production of an authenticated copy, the signatures to which are certified by the French Embassy or Consulate in the country whence the judgment comes.

PROOF OF FOREIGN
JUDGMENTS.

Section 2123 of the Civil Code requiring that the whole French tribunal, and not merely the president of the tribunal, should give execution to the foreign judgment, it is argued that a veritable decision is asked of it: to do this it is necessary that the judgment be revised. And further it is argued that it is necessary that such judgments should be closely examined, especially those to which French subjects are parties: 'il est nécessaire, autant qu'il se peut, que la justice française protège ses nationaux contre la malveillance qu'ils pourraient rencontrer peut-être de la part des tribunaux étrangers.'

Procedure.

M. de Folleville however suggests that the Code does not require this examination into the merits, but that the French courts should adopt a system similar to that provided in the Franco-Swiss Treaty noticed below [p. 98].

Once declared executory, the foreign judgment receives exactly the same force as a home judgment. This results from a comparison of sections 2123 and 1351 of the Civil Code and section 546 of the Code of Civil Procedure.

'Le jugement étranger acquiert des lors, en France, l'autorité

H

Chapter III.

de la chose jugée (s. 1351) et la force exécutoire : il engendre l'hypothèque judiciaire' (s. 2123).

The civil tribunal and not the Tribunal de Commerce is alone able to give executory force to a foreign judgment, even in a commercial suit.

The Court of Appeal can only do so in virtue of rogatory letters emanating from the Supreme Court in the foreign country.

Actes reçus.

As to documents recognised (*actes reçus*) by foreign officials, M. de Folleville thus paraphrases section 2128 making it more comprehensible. 'Whenever the document is regular according to the form required by the law of the country where it was made, it shall have by virtue of the rule *locus regit actum*, the same effect in France as if it had been executed before a French official.'

Foreign wills.

Thus a will made in a foreign country, and probate granted according to the procedure of that country, would be executory in France, according to the terms of section 1134, which says : 'agreements legally entered into become as law to those who have entered into them.'

TREATIES.

There are treaties on the subject with Russia, 11 January, 1787, with the Grand Duchy of Baden, 16 April, 1846, renewed by convention, 11 December, 1871; and a more recent one with Switzerland, 15 June, 1869; 'sur la compétence judiciaire et l'exécution des jugements.'

Franco-Swiss treaty,
1869.

Sections 15 & 19 of the Franco-Swiss Treaty relate to the mutual enforcement of the judgments of the two contracting countries.

The proof of the judgment required by the Courts is,

- i. The exemplification of the judgment or decree attested by the representatives respectively, or in their absence by the authorities of each country.
- ii. The original of the notice of the said judgment or decree, or of any other document which in the country stands in place of the notice.
- iii. A certificate delivered by the officer of the tribunal in which the judgment was given, stating that there exists neither opposition nor appeal nor other writ of error.

Execution may be refused only

- i. When the tribunal had no jurisdiction.
- ii. When the parties were not properly cited and legally represented, or
- iii. When the rules of public law or the interests of public order of the country would be affected by giving force to the judgment.

There is also a Convention with Italy, 1860, as to the 'voie diplomatique' requisite for the mutual authentication of the judgments of the two countries.

[Section 2123 of the Civil Code appears in the Haitian Code, HAITI. s. 1890: section 546 of the Code of Procedure has also been introduced into that of the Republic.

It is believed also that a Civil Code based upon the Code JAPAN. Napoleon is being prepared in Japan].

GERMAN EMPIRE

[including the Kingdoms of *PRUSSIA*, *SAXONY*, *BAVARIA*, and *WURTEMBERG*; the Grand Duchies of *BADEN* and *HESSE*, together with the numerous Duchies; and *ALSACE* and *LORRAINE*.]

According to the German Common Law a foreigner has the right of domicil (*heimaths recht*) in the country where he possesses immoveable property. He can cite those living in the kingdom before its tribunals, giving security for costs if he is not actually domiciled there: In like manner he may cite another foreigner who is in the country. It appears that he must also give security for costs in order to be allowed to defend an action in the German courts. Further the principal grounds for arrest of either the defendant's goods or person are intended flight, disappearance, and the fact of his being a foreigner, if the prosecution of the claim before the tribunals of his own country appears impossible or unreasonably difficult: sometimes however an arrest is allowed without a statement of these facts.

[ENDEMANN—
'Civilprozessrecht.']

Security for costs.

Grounds for arrest of
person or goods.

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SERVICE ON ABSENT
DEFENDANTS.

Where the defendant is out of the jurisdiction the German tribunal sends a rogatory commission to the foreign court to effect service of the summons. If this court refuses its assistance the plaintiff may effect personal service on the defendant; and if this is impossible the writ will be addressed to the defendant at the suit of the court itself and a copy will also be sent by post.

There is a Treaty between the Grand Duchy of Baden and France, 16 April 1846, for the mutual enforcement of the judgments of the two countries: This Treaty was renewed by convention 11 December 1871.

[N.-J. SARIPOLOS.
J. D. I. P. 1880. p. 173.]

GREECE.

[including the IONIAN ISLANDS.]

Code of Civil Procedure.

s. 858, the same as Code Napoleon, s. 2123. (p. 96).

s. 859. The *exequatur* is granted

i. by the President of the tribunal of first instance of the place where execution is to be issued according to the formula in sections 119 and 857, and without other examination of the merits of the judgment or public act, if all the parties to the cause are foreigners:

ii. by the whole tribunal of first instance, and only after examination into the merits of the case if one of the parties is a native.

In this latter case the dispositions which have obtained the *exequatur* as well as those to which it has been refused must be signed by all the judges and the clerk.

s. 860. In this latter case (s. 859, ii.) the tribunal can only refuse execution when the judgment is found to be in opposition to the facts proved, or when the judgment or other public act is contrary to the prohibitive laws of the state.

s. 861. When in this case the tribunal has refused the *exequatur*,

i. the foreign judgment becomes of no effect, and the action must be fought out again before the tribunals of this state.

ii. the public acts executed abroad when they have been

EFFECT OF FOREIGN
JUDGMENTS.

Where both parties
foreigners.

Where one party a native.

signed by the parties are to be considered in the nature of private agreements drawn up between the parties, agreeably to the Greek law upon the subject.

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An appeal is allowed within 10 days.

Loi d'hypothèque. August 11, 1836.

The judgment when the *exequatur* is given upon it assumes the force of *res judicata*; and there arises a general hypothec upon immoveables in the country 'présents et à venir.' [ss: 14. 16. 22. 67].

Hypothec resulting from judgment.

IONIAN ISLANDS.

The Civil Code is based upon Italian law which prevails in the Island.

Civil Code.

s. 8. A foreigner though not residing in the Ionian Islands may be cited before the Ionian tribunals for obligations contracted by him with an Ionian in the Ionian States.

SERVICE ON ABSENT DEFENDANTS.
—
in what cases.

s. 9. The same as to a foreigner residing in the Islands.

s. 10. A foreigner residing in the Islands may be cited before Ionian tribunals for obligations contracted by him in a foreign country provided the subject in dispute exist within the States.

s. 11. In all matters except those of commerce, a foreigner plaintiff shall be bound to give security for the payment of the expenses and damages resulting from the Process, when he does not possess in the state real property of sufficient value to assure the payment.

Security for costs.

ITALY

[including the States of LOMBARDO-VENETIA, MODENA, PARMA, SARDINIA, TUSCANY, TWO SICILIES and the PONTIFICAL STATES, and the Islands SARDINIA and SICILY.]

[M. SANNA
CESAR NORSA. R. D. I.
1877. pp. 78, et seq :]

Civil Code.

s. 10. (*Dispositions Préliminaires.*)

The competence of tribunals and the forms of procedure are regulated by the law of the place where the action is being carried on.

The manner of proceeding to the execution of deeds and

Chapter III.

judgments is regulated by the law of the place where execution is proceeded with.

s. 12. (, ,)

In no case shall the laws, acts and sentences of a foreign country, nor private dispositions and arrangements derogate from the prohibitive laws of the kingdom which concern the persons, goods and acts ; nor from the laws which in any way affect public order and good manners.

s. 173. the same as Code Napoleon, s. 2123 (p. 96).

Code of Civil Procedure.

SERVICE ON ABSENT
DEFENDANTS.
—
in what cases.

s. 105. A foreigner not domiciled in the kingdom may be cited before the judicial authorities of the kingdom, although he is not found within it,

- i. in actions concerning moveables or immoveables situate in the kingdom :
- ii. concerning obligations arising out of contracts entered into in the kingdom or to be executed there :
- iii. in all other instances in which it may be effected by reciprocity.

s. 106. Besides the cases mentioned in the preceding article, a foreigner can be summoned before the judicial authorities of the kingdom for engagements or obligations contracted by him in a foreign country,

- i. if he has a place of abode in the kingdom even should he not be there at the moment :
- ii. should he be in the kingdom, although he have no residence in it, provided that he be summoned *in propria personâ*.

s. 107. When a foreigner has not a fixed residence or domicile in the kingdom and a locality has not been determined upon for the execution of the contract, the proceedings against the person or property are initiated before the judicial authority of the place where the plaintiff resides.

EFFECT OF FOREIGN
JUDGMENTS.
—

s. 559. The judgments of foreign tribunals and the decisions obtained out of the kingdom are not executory in the kingdom unless due authorisation has been obtained in accordance with Title xii. Book iii. of this Code.

Title XII. Book III.

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OF THE FULFILMENT AND EXECUTION OF DECREES AND DOCUMENTS AUTHORISED BY FOREIGN AUTHORITIES.

s. 941. The power to carry into effect the judgments of foreign judicial authorities is granted by the Court of Appeal in whose circuit the same are to be executed, provided that the Court examines the decision to see,

Special proceeding to render foreign judgment executory.

- i. if the sentence has been given by a competent judicial authority.
- ii. if sentence has been pronounced after the parties have been duly summoned.
- iii. if the parties have been legally represented or were legally absent.
- iv. that the judgment does not contain provisions which are contrary to public order, or to the internal laws of the kingdom.

Examination of the judgment.

s. 942. The decree of deliberation (*il giudizio di deliberazione*) is obtained by a summary citation of the parties interested after the public prosecutor (*il ministero pubblico*) has been consulted.

Citation of parties interested.

The party asking for the decree must present the judgment in an authenticated form.

If the execution of a sentence or judgment be demanded through diplomatic agency (*nelle vie diplomatiche*), or if the party interested has not named a solicitor (*procuratore*) to move for the decree of deliberation, the Court of Appeal at the request of the public prosecutor can appoint a solicitor to act for the party.

Solicitor appointed to act for party when necessary.

s. 943. As to the execution in the kingdom of orders of sequestration granted by foreign judicial authorities, the provisions of the two preceding articles are followed so far as they may be applicable.

Execution of orders of sequestration.

s. 944. The power to carry into effect documents authenticated in a foreign country is conferred by the Civil Court of the place where the document is to be carried into effect, provided that the judgment be in accordance with the rules set out in sections 941 and 942 so far as they may be applicable.

Authenticated documents.

Chapter III.

s. 945. A judgment given or any measure provided by foreign judicial authorities respecting examination of witnesses, valuations, affidavits, interrogatories or any other legal acts or documents to be performed or executed in the kingdom, is made executory simply by a decree of the Court of Appeal of the place where such acts or documents are to be executed.

If execution is asked for direct by the parties interested, then the petition is presented to the court, with an authentic copy annexed to it of the sentence or of the measures by which the acts aforesaid were ordered.

If execution is demanded by the foreign judicial authority then the request must be forwarded through the diplomatic channels, and in this case there is no need of annexing a copy of the judgment.

Proceedings of the Court.

The Court deliberates in a private sitting, after hearing the public prosecutor, whether execution shall be allowed of the acts or documents as demanded.

Its decision is handed to the judicial authority or to the functionary representing it in order that it may be carried into effect.

s. 946. When the request is made through diplomatic channels and the party interested has not appointed any person to act for him in obtaining the execution of the acts or documents mentioned in the preceding section, then the instructions and measures, summons, writs and notices necessary to carry into effect such acts, are officially ordered by the court that has undertaken the proceedings.

If such acts, owing to any special circumstances, require the attention of the party interested, then the court aforesaid can appoint a person to represent the party.

Notice to party if absent.

If the presence of the parties interested is required or permitted at the drawing up of the act or document and the order which names the day when the act or document is to be executed, they are to be informed of it by simple note of hand delivered by the usher to such of the parties whose residence is known.

A copy of the decree is forwarded through diplomatic channels to the foreign authority in order that the other parties may be made acquainted with the proceedings.

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s. 947. When it is a question of a summons to appear before foreign authorities or of a simple notification of acts coming from abroad, permission to serve it is granted by the Public Prosecutor attached to the court or tribunal in whose circuit or jurisdiction the summons or notice is to be served.

Leave to serve summons.

If the service of the summons or notice have been demanded through diplomatic channels, then it is to be given by the Public Prosecutor direct into the hands of the usher or sheriff's officer.

s. 948. The execution in the kingdom of the acts mentioned in the three preceding articles does not do away with the necessity of obtaining the decree of deliberation when it is a question of the execution of the final judgment.

s. 949. The executory power, as set forth in sections 941—947, when granted by a civil tribunal, Court of Appeal or Public Prosecutor, is valid in order to obtain execution in any other circuit or jurisdiction.

s. 950. The resolutions and dispositions contained in the present article are subordinate to international treaties and special laws.

From the above articles it will be seen that a special procedure for enforcing foreign judgments has been provided in Italy, called '*giudizio di deliberazione*' (*instance en exequatur*, or decree of deliberation). By means of this procedure the foreign judgment is rendered executory and can be carried into execution when clothed with the '*formule d'exécutivité*.'

The principles adopted by the Italian Courts as to the examination of the foreign judgment are as follows :

It will be examined to see if it bear the character of a veritable decision, and whether it has been given in a contentious suit : that it is executory in its own country, and that it is in accordance with the law of that country. Where jurisdiction has been assumed by the foreign tribunal, the defendant being out of the jurisdiction, the proceedings will be strictly examined to ascertain if sufficient time was allowed for appearance, and whether the defendant having been regularly cited the judgment by default was regularly pronounced : also as to the cognizance of the Judges.

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Apparent error.

Fresh documentary evidence admitted.

O. xi. r. i.

When the special procedure to be used. Judgment as to immoveables in Italy.

Status.

Bankruptcy.

If there be an apparent error, for example if a Tribunal de Commerce has decided matters solely within the cognizance of the civil tribunals; or, if the defendant, having been served out of the jurisdiction, appeared and pleaded to the jurisdiction of the Court and the plea was rejected, the judgment may be examined: lastly, fresh documents may be examined, especially if they tend to show that the relations between the parties have altered since the judgment was pronounced. Pendency of appeal in the foreign country does not operate as a stay of proceedings on the judgment in Italy. Article 14 of the Code Napoleon (p. 96) and similar enactments, including doubtless the English Order xi., rule 1, are usually not recognised, and judgments proceeding on them are held to be of no effect in Italy: but latterly however there seems to have been much conflict of opinion upon this point, and indeed the French method of citation of absent defendants has been approved by the Cour de Brescia.

A foreign judgment relating to immoveables in Italy will be considered under this special procedure of deliberation; and if the Court thinks fit it will be rendered executory: a judgment relating to the status of a stranger residing in the kingdom takes effect of itself and without the intervention of the procedure; but if it be requested it must be allowed; and similarly, if the judgment be produced only to give its enacting part the force of *res judicata* it is not necessary.

In Bankruptcy, if the sentence be used as proof of the fact or to serve as a defence in an action by one creditor against the interests of the mass of the creditors the procedure is unnecessary; but when the decree is used to found execution upon it, it is required: it is required also in an action by the trustees on a contract by the bankrupt to render their appointment executory.

Where a foreign company is bankrupt the procedure is not necessary in order to affect the branch establishments in Italy.

Where parties have contracted abroad and have chosen a country for the execution of the contract the jurisdiction of the Courts of that country will be admitted.

If execution is asked of authentic acts executed in a foreign country, the proper Court to apply to for process is the Civil Tribunal of the place where execution is sought. But if execution

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is asked of a judgment the Court of Appeal of the district must be applied to. The Court of Appeal however has jurisdiction concerning the granting of executory force only: disputes arising on the actual execution must be settled by the ordinary Courts.

In order to justify the plaintiff's application, he should have in the jurisdiction of the Court applied to, property moveable or immoveable, domicil or residence.

The judgment must be properly authenticated (*'légalisé par voie diplomatique'*) and it may be produced by the party interested, or by *'commission rogatoire'* from the competent foreign authority: in this case the Court of Appeal assigns counsel if one is not already instructed by the party to present the petition.

PROOF OF FOREIGN
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The writ is to be produced to establish the regularity of the judgment, and all other papers the Court may require.

An appeal is allowed, the foreign judgment itself being produced.

A Convention exists between France and Sardinia, 24 March 1760, continued with Italy 11 September 1860, as to the *'voie diplomatique'* requisite for the mutual authentication of the judgments of the two countries.

Forms.

[From Borsari's edition of
the Code.]

No: 1.

The power to carry into effect the judgment pronounced by a foreign judicial authority is granted by the Courts of Appeal. [s. 941.]

CDXXI.

Notice of application to the Court to authorise the execution of a foreign judgment.

Before the Court of Appeal of _____, and at the request of Mr. R _____, resident at _____, who elects domicil in the kingdom in this city with Mr. _____, represented by the advocate, Mr. _____: Mr. Amilcare B _____, resident at _____, and Mr. Dominic L _____, resident at _____, are sum-

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moned to appear at the sitting of the Court, which will be held on the _____ day of _____, which day has been appointed by His Excellency the President for the purpose of granting authority to issue execution on the immoveable property of the defendants, and also on any other property belonging to them, in accordance with the laws of this country.

CDXXII.

Form in which the Court authorises the execution.

In the name

The Court of Appeal of _____, in the suit for decree of deliberation between _____ has pronounced the following judgment.

The plaintiff claims _____.

The defendants reply _____.

The public prosecutor has appeared and has summed up, that whereas _____.

The Court declares that the judgment pronounced by the Tribunal de Commerce of Marseilles on the _____ day of _____ be carried into effect.

No : 2.

The execution of the judgment may be asked through diplomatic agency. [s. 942]

An English subject, who has obtained a judgment against an Italian, remits through the English Ambassador to the Italian Minister of Foreign Affairs a petition to that effect, which document is forwarded by the said Minister to the Minister of Justice, who in his turn sends it to the '*Procuratore Générale*' of the Court in whose circuit the execution of judgment has to take place.

The judgment then takes another form.

CDXXIII.

The summing up of the public prosecutor.

To the Honourable Court of Appeal of _____

I have the honour to communicate to this Court that His Excellency the Minister of Justice by his letter of the day of _____ has remitted to this office a petition that had been forwarded by the English Government, in which it is asked of the competent judicial authorities of this country to grant the execution of a judgment pronounced by the Tribunal of Commerce at Manchester on the _____ day of _____, in the suit of O. O., British subject, against B. B., Italian subject, resident at Genoa: the purport of the said judgment being that the defendant, B. B., was ordered to pay 10,000 lire.

By our laws Mr. O. O., British subject, must be represented by an attorney resident in the place, and this in accordance with section 942 of the existing Code of Procedure, therefore the public prosecutor requests that this Honourable Court should name officially an attorney to represent the party aforesaid in order to obtain the decree of deliberation.

A. B.

(*Procuratore Générale*).

CDXXIV.

Order of the Court appointing a representative for the foreign plaintiff.

The Court of _____, Civil Section, having examined the statement made by public prosecutor; having heard the report made by the judge, Mr. _____; having deliberated in chambers, in accordance with section 942 of the Code, upon the terms of the petition, and for the purpose therein mentioned, nominates the advocate Mr. Sigismond A, resident in this city, as representative of Mr. O. O., British subject.

No : 3.

Must a judgment requiring affidavits, interrogatories and proofs to be made, answered or obtained in this country go through the same formalities?

What interests us is not exactly the contents of the judgment, but its tendency, the way in which it is drawn up and the purport of it; could not all this be made an obstacle to the grant of execution?

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It will be necessary in order to determine this to follow precisely the thread of the ideas above expressed; if the foreign judgment entails some order which requires consideration for the purpose of establishing any principle, or any formality that may arise therefrom—such as an examination of witnesses, a verification by experts, a material and effective verification—these being only consequences of the judgment, we shall then have a decision to which leave of execution cannot be granted till after the study and examination imposed by section 941 and after demonstration of its legality according to our laws.

To the isolated request to allow a proof to be taken in a suit in which judgment is not yet pronounced, a decree of the following tenour may answer the purpose :

CDXXV.

Form in which the Court authorises the examination of witnesses.

The Court of _____, Civil Section, having examined the appeal presented by Mr. Silvester K _____, Russian subject, who has elected domicile at the offices of P. C., his attorney resident in this city, for the purpose of _____; having heard the report of the judge, Mr. _____; having read the authentic copy of judgment pronounced by the Civil Court of Geneva that before any other step be taken as to the merits of the case, the Court orders the examination of the witnesses resident at R _____, situated in this province, to proceed; and having heard the public prosecutor; has decreed in chambers and authorised the execution of the judgment _____; and for the purpose of carrying into effect the operations therein mentioned, delegates the *Pretoire* of _____.

No: 4.

Fulfilment of agreements [s. 944.]

CDXXVI.

Judgment giving power to carry into effect an agreement entered into abroad.

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In the name of

In the matter between Scipio M., resident at Catania, represented by the advocate B., resident in this city, and X., not having any domicile in the kingdom, but residing at Stockholm, an absentee.

The Tribunal of
has pronounced the following judgment.

The plaintiff claims ;—having heard the public prosecutor ;—and finding that on an agreement was entered into at Stockholm between the plaintiff, Italian subject, and Polinto X., Swedish subject, in accordance with a notarial deed executed by the notary, Mr. H., of that city, of which document a duly legalised copy has been produced: finding also that by the said agreement Polinto X. binds himself to repay to Scipio M. the sum of 20,000 lire which he received in loan with interest at the rate of 6 per cent. per annum, giving a mortgage on the immoveable property that he holds in the province of Cremona: finding also in examination of the act in its intrinsic value and substance with reference to section 941 of Civil Code that no objection can be raised to its execution:

The Court authorises the execution of the agreement entered into between in all respects.

MONACO.

[E. DE LOTH. J. D. I. F.
1877, p. 121.]

The Civil Code is, except as to a very few points, the same as the Code Napoleon.

Code of Civil Procedure.

s. 232. Foreign judgments and deeds executed in foreign countries shall not be executory in the principality or on goods situated within it or the fruits thereof, except by virtue of a special ordinance of the Prince on the report furnished to him by the Advocate General.

EFFECT OF FOREIGN
JUDGMENTS.

The following is the procedure:—*L'avocat défenseur* of the Procedure. Monaco bar who is retained to present the petition makes out a

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PROOF OF FOREIGN
JUDGMENTS.

request to His Serene Highness setting out the facts succinctly. In support of the petition an engrossed copy of the 'title' to be made executory and all other necessary documents are presented. This copy and all the other papers should be attested by a minister, plenipotentiary, a chargé d'affaires or a consul of Monaco according to the country whence the judgment comes. They are then stamped and registered. The brief is then remitted to the Advocate General who examines it to see if all the papers are regular, and that the judgment contains nothing contrary to the laws and customs of Monaco or against good manners. He then prepares a report and form of order which he submits to the Prince. H. S. H. either rejects the demand or endorses the order making the judgment executory, and indicating the deposit of the title in the Clerk's office where the parties may obtain copies of the order: the judgment may then be executed as a Mongascan judgment. Where the judgment has proceeded by default, an affidavit must be produced stating that it has been given according to the forms and after the necessary delays prescribed by the foreign law: and also that there is no appeal nor opposition pending.

The whole decision rests with His Serene Highness the Prince of Monaco, who exercises this right 'avec la plus impartiale justice et la plus grande circonspection.'

NETHERLANDS.

[Colonies:—South America—DUTCH GUIANA or SURINAM.

East Indies—JAVA and MADURA, PAPUA, West Coast of SUMATRA or NEW GUINEA, CELEBES, MOLUCCAS, West South and East parts of BORNEO, BENKULEN, LAMPONGS, PALEMBANG, RIAN, BANCA, BILLITON, MENADO, TIMOR and SUMBA, BALI and LOMBOK.

West Indies—CURACOA, ARUBA, SAINT MARTIN, BONAIRE, SAINT EUSTACHE, SABA.]

In 1874 M. le baron Gericke de Hercoynen, Minister of Foreign Affairs in the Netherlands, started a project for an International Conference on the subject of foreign judgments; a circular note was addressed to the Powers but nothing resulted from it.

The method of service of writ on absent defendants is the same as in France.

SERVICE ON ABSENT
DEFENDANTS.

Code of Civil Procedure.

s. 127. the same as s. 14 of the Code Napoleon (p. 96).

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in what cases.

PORTUGAL.

[Colonies:—CAPE VERDE ISLANDS, BISSAGOS ISLANDS. Saint THOMAS and PRINCES ISLANDS in the Gulf of Guinea: in Senegambia, BISSAO, &c.; AJUNDA, ANGOLA, AMBRIZ, BENGUELA, MOSSAMEDRES, MOZAMBIQUE, GOA, DAMAUN, DIU, MACAO, part of TIMUR ISLAND, SALSETTE, BARDES and the INDIAN ARCHIPELAGO.]

Civil Code. 1867.

s. 28. the same as Code Napoleon s. 14. (p. 96.)

s. 29. *id.*: s. 15. „

s. 31. Judgments pronounced by tribunals on civil matters between foreigners and Portuguese subjects may be executed by order of the tribunals of this country, in conformity with the rules laid down in the Code of Civil Procedure.

SERVICE ON ABSENT
DEFENDANTS.

in what cases.

Code of Civil Procedure.

s. 180. The summons or writ to be served on a person residing outside the limits of the jurisdiction of the judge, or out of the district of the Court that has issued them shall be served by special order. Leave to serve out of jurisdiction.

s. 18. Corporate bodies shall be sued before the Courts of the place where their head office is situate. Foreign companies.

i. The Court of the place where the branches, agencies or affiliated establishments of any bank, society or company are situated, is competent to hear and determine suits brought against them, when it is a question of agreements effected or engagements undertaken by the said branches, agencies or affiliated establishments.

ii. The provisions contained in the preceding section are equally applicable to branches, agencies or affiliated establishments of banks, societies, companies or any other association whatsoever, which may have their residence in a foreign country with reference to deeds or agreements effected in Portugal.

s. 19. The action shall be brought in the district wherein the

Chapter III.**SERVICE ON ABSENT
DEFENDANTS.**

judicial act was executed or where the occurrence happened that has given rise to the suit.

s. 20. A Portuguese subject or foreigner resident abroad can be sued before the Portuguese tribunal of the place where he may happen to be, should the suit be for an agreement entered into by him in the kingdom or with a Portuguese in a foreign country.

s. 21. v. Judgments, including inventories for the division of property between married people, may be executed by the Court of First Instance in which the motion for proceedings is made ; except,

**Execution of Foreign
Judgments.**

vii. (b). the judgments of foreign tribunals which are to be executed by the Court of the place where the defendant resides, or where the property is situate, according to section 1087: When the competency of the Court by reason of the situation of property shall have been determined and the property is in more than one district, then the plaintiff can execute the judgment in any one of them ;

(d). the judgments of the Court of Commerce which are to be enforced by the Court of the place where the defendant resides ; or should he be abroad, then by the Court of the place where the proceedings to enforce the judgment may be instituted ; and if these should be instituted in a foreign country then the matter is to be considered in the Lisbon Circuit.

**EFFECT OF FOREIGN
JUDGMENTS.**

s. 39. The Supreme Court of Judicature is competent,

vi. to examine the judgments pronounced by foreign tribunals and confirm them when the same are to be enforced in its circuit ;

to revise judgments pronounced by foreign tribunals.

s. 1087. Judgments pronounced by foreign tribunals to which the third section of the Civil Code refers shall not be carried into effect in the kingdom unless they are first examined and confirmed by one of the Supreme Courts of Judicature, in the presence of the parties interested and of the public prosecutor, except when from some other cause it be stipulated to the contrary.

i. Such a revision or confirmation is within the jurisdiction of the Supreme Court of Judicature of the district where the

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defendant resides, or of that where the property is situate should the defendant have no domicile in the kingdom.

s. 1088. When the judgment has been presented and distributed (*e distribuida*), the person charged to report upon it shall summon the defendant to appear within eight days and make known his defences. The same time is given to the judgment creditor.

i. The following defences may be raised :—

Defences.

- (a) Any doubt whatsoever respecting the authenticity of the documents or the clearness of the judgment.
- (b) That the sentence or judgment was not duly pronounced.
- (c) That the sentence was pronounced by an incompetent tribunal.
- (d) That the parties either were not duly summoned, or were not legally absent.
- (e) That the judgment is contrary to the principles laid down in the Portuguese laws or is against the laws of public security and order.
- (f) If the judgment has been given against any Portuguese subject and is contrary to the principles laid down in the Portuguese Civil Code, the question must be determined by that Code.

ii. In the suit, evidence is not admitted as to the merits of the case.

s. 1089. After the defences have been presented within the time allowed, the suit shall be continued in the presence of the parties and of the public prosecutor according to the rules laid down in section 1049, and the case together with the documents and schedules shall go for final revision to the reporter (*relator*) and then to four judges in turn for their approval.

Procedure after defences lodged.

i. The judgment or decision shall be pronounced upon in private sitting, in the presence of at least three of the judges who examined the papers, who shall confirm, grant or refuse judgment by three votes at least.

s. 1090. The provisions contained in the preceding articles are equally applicable to judgments pronounced in cases where both the parties interested are foreigners or both are Portuguese subjects.

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s. 1051. The judgment having been confirmed, the decision on the case, or a copy of it when a revision intervenes, shall go to the Court competent to carry it into execution.

OF PETITIONS.

s. 86. Petitions shall be presented in the King's name, signed and sealed by the judge in ordinary or by the judge who has reported on the case, and signed by the clerk.

s. 87. The judge or Court to which the petition is addressed shall refuse the application, in either of the following cases :—

- i. If it is not competent to grant what is asked.
- ii. If what is asked is absolutely prohibited by the laws.

OF ROGATORY LETTERS.

s. 88. The provisions of section 86 apply also to rogatory letters sent to the Portuguese Courts.

s. 89. Rogatory letters emanating from foreign authorities if not received through diplomatic channels shall not be attended to without previously being submitted to the public prosecutor.

- i. When placed in order and collected, the whole of the documents shall be left for examination for forty-eight hours in the hands of the public prosecutor, and afterwards the judge shall decide if they shall be executed.
- ii. The public prosecutor has a right to set up any objection to the execution of the rogatory letters, and can have recourse by way of appeal against the orders issued.
- iii. An appeal lodged by the public prosecutor against the order to carry out the rogatory request shall suspend the execution thereof.
- iv. Any summons or writ to be issued if served by the clerk or usher shall be served as laid down in sections 179 & 180.
- v. In the districts of Lisbon and Oporto the public prosecutor shall be represented by the General Trustees for Orphans when what is requested affects them.

s. 213. Documents written in a foreign language shall only be considered when accompanied by a translation duly legalized by the Consul of the place ; and, if the said documents are forwarded

Procedure on rogatory
commission.

PROOF OF FOREIGN
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by foreign authorities, shall only be considered as valid if authenticated by the diplomatic agent or Portuguese Consul at the place, and the signature attached to them duly verified by the Minister of Foreign Affairs.

- i. Should there not be in the kingdom a Consul of the nation or country whence the document comes, then it shall be translated by an expert.

ROUMANIA.

[G. PETRONI, J. D. L. P.
1879, p. 351.]

[Including MOLDAVIA and WALLACHIA.]

Code of Civil Procedure.

EFFECT OF FOREIGN
JUDGMENTS.

s. 374. Foreign judgments can only be executed in Roumania in the same way and to the same extent as Roumanian judgments are executed in the foreign country, and after they have been declared executory by the competent Roumanian judges.

They are to be declared executory by the full Court and not by the president alone: no action is allowed on the merits; and there is no distinction recognised in favour of Roumanians.

The process is as follows:—

The party by himself or his proxy (compulsory application by attorney being unknown), sends his preliminary petition to the president or presiding judge: the judge notes on it the day of receiving it, and the day appointed for hearing: a fee is payable to the usher.

ss: 69. 94.

The tribunal competent to hear the action is that of the defendant's domicil, in the case of moveables: but in the case of immoveables that of the locality where they are situate.

In the principal districts the tribunals of first instance comprise several sections: the petition should go to the president of the first section, called 'premier president.'

The extrinsic conditions requisite for the enforcement of the judgment are:

conformity to the laws of public order.

reciprocity.

accuracy of the translation of the judgment.

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RUSSIA.

[F. MARTENS, J. D. I. P.
1878, p. 139.]

[*Including in Europe—RUSSIA PROPER, POLAND and FINLAND, with the Islands SPITZBERGEN and NOVA ZEMLA; and in Asia—CAUCASIA, SIBERIA and CENTRAL ASIA.*]

There exist in Russia three distinct Civil Codes: first, the Russian Code proper: secondly, the Polish Code: thirdly, the Code of the Baltic provinces and Finland. The second of these Codes is the only one however in which foreign judgments are mentioned.

Foreign judgments unless it be otherwise settled in political ordinances or treaties do not carry judicial hypothec till they are clothed with an order of execution given by the ordinary competent tribunal.

EFFECT OF FOREIGN
JUDGMENTS.

Procedure. —

Code of Civil Procedure. 1864.

s. 1273. Foreign decisions are to be rendered executory in Russia according to the rules laid down in international treaties concluded between the Imperial Government and the other powers. In the absence of treaties the Russian tribunals will follow the following dispositions.

- i. The preliminary authorization of the Russian tribunal is necessary. (s. 1278).
- ii. The tribunal competent to give executory force to a foreign judgment is the Court of the arrondissement where execution is to take place. (s. 1275).
- iii. The tribunal after having examined whether the cause has in reality been tried abroad by a competent tribunal, is to give its *exequatur* without any examination as to the merits. (s. 1276).
- iv. The judgment may be examined if it is against public order or the laws of the Empire. (s. 1279).

A judgment contravening these laws or relating to the ownership of immovables in Russia will not be enforced. (s. 1281).

- v. The execution of the judgment will be according to Russian law. (s. 1250).

ss : 923 & 203 *et seq.* : apply to the competence of the plaintiff applying to the Court of the arrondissement (*Okroûgny Soud*).

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PROOF OF FOREIGN
JUDGMENTS.

The following papers are required by the Court :—

A copy of the judgment collated by the Court in which it was given, accompanied by the '*formule exécutoire*' according to the law of the country.

This is to be certified by the Russian Legation or Consul and countersigned by the Russian Minister of Foreign Affairs for the legalisation of the signatures of the Minister Plenipotentiary or Consul abroad.

A Russian translation of the judgment : together with copies of these documents.

The Court does not examine it on the merits, but treats it as an *ex parte* application (*matière sommaire*).

Its examination of the competency of the foreign tribunal is to be determined by the law of that country : but this may be examined if it be against international law.

It may also enquire into it if it relates to immoveables in Russia :

Also to see if the parties were regularly cited and the rights of defence respected :

And whether it is of the force of *res judicata* at home, or whether an appeal is pending.

A divorce between Russian subjects belonging to the orthodox Greek Church will not be recognised.

There is a treaty with France, 11 January 1787, relative to the mutual enforcement of the judgments of the two countries.

SPAIN.

[Colonies :—BALEARIC ISLANDS, MAJORCA, MINORCA and IVIZA, CANARY ISLANDS, PHILIPPINE ISLANDS, CUBA, PUERTO RICO, FERNANDO PO and ANNABON, CAROLINE ISLANDS and PALAOS, MARIAN ISLANDS.]

Civil Code.

s. 98. All foreigners resident either permanently or temporarily are subject to the laws of Spain and to the Spanish tribunals for misdemeanours and crimes committed in Spanish territory, and also for the fulfilment of obligations contracted by them in Spain ; or even out of Spain should they be in favour of Spanish subjects. [*Real Decreto*. 1852. s. 29.]

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s. 99. All foreigners resident either permanently or temporarily are entitled to ask the Spanish tribunals to administer justice on their behalf in respect of the fulfilment of obligations contracted by them in Spain or to be executed in Spain, or when they have reference to property situated in Spanish territory. [*id.*: s. 32].

s. 100. In the matter of disputes arising between or against foreigners upon obligations contracted in Spain, although it be in neither a real nor a personal action, the Spanish judges will without doubt be fully competent, when it becomes a question of preventing a fraud, to adopt urgent provisional measures in order to prevent a debtor leaving the country to avoid payment, or in order to allow the sale of goods liable to perish by warehousing, or in order to appoint a keeper provisionally for a madman, or to do anything of a similar nature. [*id.*: s. 33].

EFFECT OF FOREIGN
JUDGMENTS.

Treaties.

Code of Civil Procedure. 1855. [Ley de Enjuiciamiento Civil.]

s. 922. Sentences pronounced in foreign countries shall have in Spain the force that the respective treaties give them.

Reciprocity.

s. 923. Should there be no special treaties with the nation wherein they may have been pronounced, they shall have the same force that is given by the laws of that nation to judgments pronounced in Spain.

Defences.

s. 924. Should the judgment proceed from a nation where, by the jurisprudence, fulfilment is not given to judgments pronounced in Spanish tribunals, it shall have no force in Spain.

s. 925. Not being comprised in either of the cases whereof the three preceding articles speak, judgments shall have force in Spain, if they combine in themselves the following circumstances :—

- i. That the judgment has been pronounced in consequence of the exercise of a personal action.
- ii. That it has not been pronounced in contumacious absence.
- iii. That the obligation for the performance of which it has issued is lawful in Spain.
- iv. That the judgment contain in itself the requisites necessary in the nation in which it may have been pronounced in order to be considered authentic, and those which the Spanish laws require in order to make it evidence in Spain.

s. 926. The execution of sentences pronounced in foreign countries shall be solicited in the Supreme Tribunal of Justice.

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Mode of procedure.

This Court, after translation of the judgment has been made in conformity with law, and after hearing the party against whom it is directed and the fiscal attorney, shall declare whether it ought or ought not to be fulfilled.

s. 230. Should the defendant reside in a foreign country, the letter of exhortation shall be addressed in the form that may be laid down by treaties, or in default thereof in the way which the general instructions of the Government may determine.

SERVICE ON ABSENT
DEFENDANTS.

In this case the judge shall extend the term of the summons for the time that, having regard to the distance and greater or less facility of communication, he may deem necessary.

s. 231. Should the domicil of the defendant not be known, he shall be summoned by means of edicts which shall be affixed in public places, and inserted in the official daily papers of the place wherein the suit is being prosecuted, of the place wherein he had his last residence, and in the *Gaceta de Madrid*; this last when the circumstances of the persons and of the matter require it, according to the opinion of the judge.

Publication.

Without prejudice to this, the preceding summons may be effected in any place where the defendant may be found.

Ley Hipotecaria. 1861.

[Grain's Translation.]

s. 5. In the registers may be inscribed documents or titles relating to realty and certain contracts of lease (s. 2) executed in a foreign country, which may have force in Spain in conformity with the laws, and executory decrees, wherein are declared the legal incapacity to manage property or the presumption of death of absent persons, the passing of the sentence of interdiction or other whatsoever, whereby the civil capacity of persons may be modified as regards the free disposal of their property, pronounced by foreign tribunals, to which fulfilment must be given in the kingdom in conformity with the law of civil procedure.

Law of hypothec extended
to foreign judgments in
certain cases.**CUBA AND PUERTO RICO.**

A Code of Civil Procedure was issued in both these Colonies 1 July 1866, based upon the Spanish Code.

Chapter III.

SWEDEN.

[A. W. BJORCK.
K. D'OLIVECRONA.
J. D. I. P. 1880. p. 83.]

The old law of Vestrigothis (xiii century) still binds the Courts: —‘Le même droit que les étrangers nous accordent, nous voulons les accorder.’

The Code of 1794 still in force contains no reference to foreign judgments: efforts have been made to bring about a treaty between Sweden and Norway for the mutual enforcement of judgments of the two countries, but up to the present time they have been unsuccessful, the Norwegian Storting having, ‘sous l’influence d’une jalousie inexplicable,’ refused the advances of the Swedish Diet.

EFFECT OF FOREIGN
JUDGMENTS.

There is a treaty between Sweden and Denmark, 15 June 1861: but with the exception of Danish, foreign judgments are not recognized in the country: the Courts however are gradually improving.

SERVICE ON ABSENT
DEFENDANTS.

An elaborate process is provided for the purpose of summoning to the Courts an absent defendant who is a Swedish subject: but as regards personalty the Swedish Courts refuse to assume jurisdiction over foreigners.

As regards realty, a foreigner who possesses an estate in Sweden is obliged to have an agent there authorised to accept service of writs. The name of the agent must be sent to the judge of the district where the estate is situate. If no such agent is appointed, the judge will appoint one who will have the same powers as the regularly authorised agent.

NORWAY.

The Norwegian law resembles the Danish, being based upon the writings of Anders Sandó Orsted.

As regards foreign judgments the practice appears to be as backward as that of the Swedish Courts.

SWITZERLAND.

There exists in Switzerland Federal Law and Cantonal Law; where there is any conflict the former prevails. The Federal law up to the present time has made no provision towards assimilating the procedure of the Cantons in the matter of foreign judgments.

Each Canton has its own code ; but it has been found impossible to obtain either information on the subject, or copies of these codes, except from a very few of the Cantons.

There is a treaty with France, 15 June 1869, 'sur la compétence judiciaire et l'exécution des jugements,' for the mutual enforcement of the judgments of the two countries. [See p. 98.]

GENEVA.

[CHARLES BROCHER.]

Loi de Procedure Civile. 29 September, 1819.

s. 376. Judgments given and documents recognised out of the jurisdiction of the Canton cannot be executed within it, until they have been declared executory by the civil tribunal, the parties being heard and duly cited and the public minister heard, without prejudice to contrary dispositions which may exist in treaties or concordats [or in the Federal constitution].

EFFECT OF FOREIGN
JUDGMENTS.

s. 377. All execution shall be null and void which has been followed up in contravention of the preceding article.

Loi. 28 June, 1830.

s. 3. The same conditions are required in order to enable foreign judgments to be entered in the registers of the office of hypothecs and thus to be clothed with the publicity necessary to make them executory.

The terms of these sections are generally understood to give authority to the tribunal to enquire into the judgment on the merits, and if necessary to modify it before granting an *exequatur* upon it. This authority has by custom resolved itself into leaving the whole matter in each case to the prudence and discretion of the tribunal: the competency of the tribunal being the first matter always enquired into.

The judgment must come before the Genevese tribunal clothed with all the forms necessary to prove its authenticity.

Loi d'organisation judiciaire. 5 December, 1832.

As regards judgments coming from other Cantons, reciprocity is demanded.

s. 60. iii. The Courts of the Canton assume jurisdiction over non-resident foreigners in respect of obligations contracted by them with persons domiciled in the Canton. Assumed jurisdiction.

Chapter III.

[Those persons only are to be considered as domiciled who have applied for and obtained leave to fix their domicile in the Canton].

NEUCHÂTEL.*Civil Code.*

s. 1723. The same as Code Napoleon, s. 2123. (p. 96).

TESSIN.*Civil Code.*

s. 1153. The same as Code Napoleon, s. 2123. (p. 96).

VAUD.*Civil Code.*

s. 9. A Vaudois may be summoned if domiciled in the Canton
* for obligations contracted with foreigners in foreign countries.

s. 674. *b.* The judge may sequester the goods in the Canton of any one though not domiciled there.

Code of Civil Procedure.

s. 4. Absent foreigners may be summoned in the cases mentioned in section 8 of the Civil Code : that is to say,

- i. in civil actions resulting from a fault or offence committed in the Canton.
- ii. in real actions concerning property situated in the Canton.
- iii. where in an agreement signed in any country there is a stipulation to submit disputes to the tribunals of the Canton.
- iv. where the defendant, having been domiciled in the Canton, has no known domicile, if the action be commenced within three months of his leaving the Canton.

TURKEY.

[including In Europe—BULGARIA, EAST ROUMELIA, and BOSNIA; and in Asia—ASIA MINOR, SYRIA, PALESTINE, MESOPOTAMIA and WEST ARABIA.]

Law of 7 Sepher 1284. [A.D. 1873.]

Conceding to strangers the right to possess immoveables in the Empire : and relating to those countries only who have adhered to the Protocol of the Sublime Porte relative to this law : [of which countries Great Britain is one].

SERVICE ON ABSENT
DEFENDANTS.
—
in what cases,

Chapter III.

s. 2. iii. The owner of the property is to submit to Ottoman tribunals on all questions relating to the property, even if the other party be a foreigner, without being able to plead effectually his own nationality, subject to the reserves and immunities agreed upon by treaties.

Jurisdiction over foreign owners of property.

s. 3. In case of bankruptcy of the foreign proprietor, the syndics of the bankrupt may require from the Ottoman tribunals an order for the sale of the property which from its nature and according to law is held answerable for the debts of the owner.

The same thing shall happen when a foreigner has obtained a '*jugement de condamnation*' before a foreign tribunal against another foreigner who is owner of immoveables in the Empire.

EFFECT OF FOREIGN JUDGMENTS.

To obtain execution of this judgment against the property, the creditor must move the competent Ottoman authority for an order to obtain the sale of such immoveables as are held answerable for the debts of the proprietor. But this judgment shall only be executed by the authorities and tribunals of the Empire when they shall have ascertained that the property required to be sold really belongs to the category of those which may be sold to pay the debt.

Code of Commercial Procedure. [1867.]

s. 12. Absent defendants are to enter appearance within the following times:—

SERVICE ON ABSENT DEFENDANTS.

Cyprus, Crete, and the Archipelago . . . 2 months.

Time for appearance.

Egypt, Tripoli, Tunis, and States bordering

on the Ottoman Empire . . . 4 „

Other European States . . . 6 „

In time of war these periods are doubled.

s. 20. (2). Companies may be sued by their manager, service being effected at the place of business: if there is no place of business a partner may be served where he is domiciled.

Companies.

(4). For those who have no domicil nor known residence in Turkey the writ shall be affixed by order of the President of the Court in the Hall of the Court where the action is brought, and a copy shall be inserted in the papers, chiefly in those which, according to the defendant's circumstances, will be the most likely to be read by him.

Defendants with no known residence.

Chapter III.

Defendants resident in
foreign countries.

(6). For those resident in foreign countries, the writ shall be transmitted by letter from the President of the Court to the Minister of Foreign Affairs to be sent by him as soon as possible to the defendant's residence. The usher is to take a written receipt from the post office to assure the letter having been posted.

Protocol. 24 February 1873. For the Province of Tripoli.

The Sublime Porte engages that actions between natives and English, French or Italian subjects shall be tried according to the capitulations in force, and in the same way as in the other Ottoman Provinces.

CHAPTER IV.

AMERICA.

A M E R I C A.

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[It has been found impossible to obtain copies of the Codes of many of the South American Republics.]

THE UNITED STATES OF NORTH AMERICA.

NEW YORK.

The principles adopted by the American Courts on the subject of foreign judgments closely resemble the English doctrines. The cases which have been decided both by the Supreme Court of New York and the courts of the individual States are collected in Story's Conflict of Laws side by side with the English decisions.

In an action on a foreign judgment the defendant may require Security for costs. from the plaintiff whether citizen or alien security for costs to the extent of \$250.

Code of Civil Procedure.

s. 390. Where a cause of action which does not involve the title STATUTE OF LIMITA-
TION. to, or possession of real property within the State, accrues against a person who is not then a resident of the State, an action cannot be brought thereon in a court of the State against him or his personal representative after the expiration of the time limited by the laws of his residence for bringing a like action, except by a resident of the State, and in one of the following cases:—

If foreign statute bars
remedy (except as to
realty) defence good;
except in favour of
resident.

i. Where the cause of action originally accrued in favour of a resident of the State.

ii. Where, before the expiration of the time so limited, the person in whose favour it originally accrued, was or became a resident of the State, or the cause of action was assigned to, and thereafter continuously owned by, a resident of the State.

s. 430. A resident of the State may execute a deed designating Designation of person to
accept service. a person upon whom service may be made in his absence.

s. 432. A copy is to be delivered within the State as follows : Service on foreign
companies.

i. To the president, treasurer or secretary; or if the corporation

K 2

Chapter IV.

lacks either of these officers, to the officer performing corresponding functions under another name.

- ii. To a person designated for the purpose by the president.
- iii. If such a designation is not in force, or if neither the person designated, nor an officer specified in (i.) can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation within the State.

s. 433. The last section applies to the service of process or other paper whereby a special proceeding is commenced in a court, or before an officer, except a proceeding to punish for contempt, and except where special provision for the service thereof is otherwise made by law.

s. 434 provides the method for proof of service.

s. 438. An order directing the service of a summons upon a defendant without the State, or by publication, may be made in either of the following cases :—

- i. Foreign companies; or, natural persons not being residents of the State.
- ii. Absence of defendant from State to avoid service or defraud creditors :
- iii. Where a resident of the State has been continuously without the United States more than six months next before the granting of the order, and has not designated anybody to accept service, or the person designated cannot be found in the State.
- iv. Where the complaint demands judgment against a resident of the State annulling a marriage, or for a divorce, or a separation.
- v. In all actions affecting the title to real or personal property, the defendant being a resident of the State or a domestic corporation.
- vi. In actions commenced sixty days next before the expiration of any period limiting the action under the statutes of limitation.
- vii. Where the action is against the stockholders of a corporation, or joint stock company, and is authorised by the law of the State, and the defendant is a stockholder thereof.

Proof of service.

SERVICE ON ABSENT
DEFENDANT.

in what cases.

Chapter IV.

s. 439. The plaintiff when he applies for the order, must present to the judge a verified complaint, showing the cause of action for which judgment is demanded against the defendant to be served. Proof, by affidavit, must also be made of the additional facts required by s. 438. Affidavit required.

s. 440. The order may be made by a judge of the court, or the county judge of the county where the action is triable. Order thereon, by whom made.

It must direct either publication in two newspapers for a certain time not less than once a week for six successive weeks : or, at the option of the plaintiff, personal service upon the defendant without the State : further, that on the first day of publication the plaintiff post to the defendant one or more sets of copies of the summons, complaint and order ; or a statement that the judge dispenses with this, being satisfied that the defendant cannot be found with reasonable diligence. Publication.

s. 441. The first publication is to be made within three months after the order is granted.

For the purpose of reckoning the time within which the defendant must appear or answer, service by publication is complete upon the day of the last publication pursuant to the order ; and service made without the State is complete upon the expiration thereafter of a time equal to that prescribed for publication. Time for appearance.

ss : 442. 443. Where service is made by publication or without the State, the summons complaint and order and the papers upon which the order was made, must be filed with the clerk on or before the day of the first publication ; and a notice subscribed by the plaintiff's attorney and directed only to the defendant or defendants to be thus served, substantially in the following form, the blanks being properly filled up, must be subjoined to and published with the summons : Papers to be filed.

"To The foregoing summons is served upon you, by publication (or, without the State of New York) pursuant to an order of . . . dated . . . and filed with the complaint, in the office of the clerk of . . . at" Form of notice.

s. 444. Proof of publication is to be by affidavit of the printer or publisher or his foreman or principal clerk. Proof of posting or delivery, by affidavit of the person who posted or delivered it. Proof of publication.

Chapter IV.

Defendant's appearance
after judgment.
within what time.

s. 445. If the defendant does not appear, he may show cause within one year after service of written notice of final judgment : or if there has been no such service, within seven years after the filing of the judgment. If he is successful, the court may order restitution : but bonâ fide purchasers shall not be affected.

Personal service out of
jurisdiction.

It will be noticed that in all those States in which constructive notice by publication is allowed when the defendant is non-resident, personal service on the defendant out of the jurisdiction is also allowed, and is equivalent to service by publication. The English method of serving only a notice of the writ on a foreigner out of the jurisdiction in lieu of the writ itself has not yet been adopted in the American Codes of Procedure.

ss : 914—920 relate to depositions taken within the State for use without the State.

PROOF OF FOREIGN
JUDGMENTS.

s. 952. The copy of the record is to be accompanied by

- i. an attestation by the clerk of the court with the seal of the court affixed ; or by the officer in whose custody the record is legally kept, under the seal of his office :
- ii. a certificate of the chief judge or presiding magistrate of the court, that the person is clerk or officer ; and that his signature to the attestation is genuine :
- iii. a certificate under the Great Seal of the Government or Secretary of State or other officer having custody of the Seal, to the effect that the court is duly constituted, specifying generally the nature of its jurisdiction : and that the signature of the chief judge is genuine.

Other proof.

s. 953 provides an alternative and less elaborate method.

- i. The copy is to be compared by the witness with the original, who is to prove that it is an exact transcript of the whole of the original ;
- ii. also that the original was, when the copy was made, in the custody of the clerk of the court, or other officer legally in charge.
- iii. also that the attestation is genuine.

[see the cases *Vandervoort v. Smith* (2 Caine 155), and *Jarvis v. Sewall* (40 Barbour, 449.)]

Chapter IV.

s. 954. Nothing in this article is to be construed, as declaring the effect of a record or other judicial proceeding of a foreign country, authenticated, so as to be evidence.

s. 956. A copy of a patent, record or other document remaining of record in a public office of a foreign country, certified according to the form in use in that country is evidence, when authenticated, as follows :

Documents from foreign countries;
how authenticated.

i. By the certificate under the hand and official seal of a commissioner appointed by the governor to take the proof or acknowledgment of deeds in that country, to the effect that the patent record or document is of record in the public office, and that the copy thereof is correct and certified in due form.

ii. By a certificate under the hand and official seal of the Secretary of State annexed to that of the commissioner, to the same effect as prescribed by law for the authentication of the certificate of such a commissioner upon a conveyance to be recorded within the State. The certificate of the commissioner, thus authenticated, is presumptive evidence that the copy of the patent, record or document is certified according to the form in use in the foreign country.

ALABAMA.

Code.

s. 2911. If the laws of another country bar a suit upon a contract or act done there whilst the party sought to be charged thereby was a resident of such country, it is barred in the same manner here.

If foreign statute bars remedy, defence good.

s. 1949. A will proved in another country may be admitted to probate in this State : The will or copy with probate annexed is to be certified by the clerk of the foreign court in which the will was proved ; and a further certificate of the judge that the attestation is genuine.

Effect of foreign probate.

s. 2293. An action may be maintained and property recovered by a foreign administrator by first, recording a copy of letters of administration duly authenticated according to the law of the U. S. in the office of the judge of probate in the country where the property is situate ; and, secondly, by giving a bond.

Action by foreign administrator.

Chapter IV.

ARKANSAS.*Laws. c. 106.*

ss : 15. 19. Actions on home judgments are barred in 10 years; and on foreign judgments (presumably) in 5 years.

COLUMBIA.*Laws. c. 97.*

STATUTE OF LIMITATION.
—

If foreign statute bars
remedy, defence good.

ss : 2. 3. Actions on home judgments are barred in 10 years; and on foreign judgments (presumably) in 5 years.

s. 17. If a cause of action has arisen in another country between persons not resident in this State, and is barred there by lapse of time, it is barred here.

c. 81.

SERVICE ON ABSENT
DEFENDANT.
—

in what cases.

s. 7. If an affidavit is filed that the defendant is non-resident and that a cause of action exists against him, service may be made by publication, in the following cases :—in actions

- i. relating to realty.
- ii. to establish or set aside a will.
- iii. against non-residents or foreign corporations having property in the district or debts owing to them subject to the process of the court.
- iv. to exclude defendant from his interest in any property in the district : and
- v. when the defendant avoids service.

Publication of notice.

s. 8. The notice is to be published in some newspaper selected by the court not less than once a week for six weeks :

If the defendant's residence abroad is known, the notice is to be posted to him :

The service is held to be complete at the end of the time ordered.

The publication is to contain a summary of the object and prayer of the petition.

CONNECTICUT.*Laws. Tit : 1. c. 2.*

Service on agent.

s. 23. If the defendant is absent and possesses property in the

State the writ of summons may be left with his agent; if he possesses land, a copy is to be left at the office of the town clerk where the land lies; if there is no agent, it may be left on the person in charge :

The copy is to be a true and attested copy.

From *Middlebrooks v. Springfield Insurance Co.* (14 Conn : Rep : 301) it would seem that a foreign corporation with only an office in the State cannot be served with a writ.

GEORGIA.

Code.

ss: 2854. 2855. Actions on home or United States judgments are barred in 7 years, and on foreign judgments in 5 years.

s. 3526. A dormant judgment may be revived against an absent defendant, a notice being published in the Gazette once a month for 4 months.

ILLINOIS.

Laws, c. 109.

s. 9. A foreign probate may be recorded in the State if accompanied by a certificate of due execution and proof according to the laws of its own country. Foreign probate.

INDIANA.

Code.

ss: 212. 225. Actions on home or United States judgments are barred in 20 years, and on foreign judgments (presumably) in 15 years.

s. 40. If the plaintiff file an affidavit that the defendant is unknown and is believed to be out of the State, the court may make such order as to notice and publication as may be deemed proper.

s. 41. Where there has only been service by publication, except in the case of divorce, the judgment may be opened and a defence admitted within 5 years.

ss: 42. 43. Notice in such case is to be given to the heirs: the

SERVICE ON ABSENT
DEFENDANTS.

Chapter IV.

defence is to be filed and an affidavit that there was no actual notice :

bonâ fide purchasers of property are not to be affected.

s. 391. Where there has only been constructive notice, the defendant may appear at any time before judgment; time will then be allowed him to prepare for trial.

ss: 392. 393. The plaintiff is required to file an affidavit of the truth of his claim, and may also be required to swear in court, and to answer any interrogatories that may be put to him by the court.

s. 394. Any set-off that may thus be disclosed is to be adjusted.

s. 395. No personal judgment shall be rendered against a defendant constructively summoned who has not appeared in the action.

Foreign companies.

s. 681. Actions may be brought against a foreign corporation by any person having a cause of action against it within the State where any property belonging to it or debts due to it may be found: If there is no person within the State authorized to transact its business the company may be summoned constructively. (Act of 1858).

In real actions, the constructive summons is to be published for three weeks successively in a State newspaper in the following cases :—

when they may be sued.

- i. Where the cause of action arises within the State and the foreign corporation has property in the State :
- ii. Where a resident of the State is absent in order to avoid service :
- iii. Where the defendant is non-resident, and the cause of action arises out of a contract, or out of a duty imposed by law, or to enforce or discharge a lien, or to obtain a divorce.

IOWA.*Code.***STATUTE OF LIMITA-
TION.**

If foreign statute bars
remedy, defence good.

s. 2529. (v. vi). Actions on home or United States judgments are barred in 20 years, and on foreign judgments in 10 years.

s. 2534. If a cause of action is fully barred in the country where the defendant has previously resided, such bar shall be the same defence in the State.

Chapter IV.

s. 2618. Service may be made by publication when an affidavit is filed that personal service cannot be made on the defendant within the State in the following cases : in actions

SERVICE ON ABSENT
DEFENDANTS.

in what cases.

- i. for the recovery of realty or any interest therein.
- ii. for the partition of realty.
- iii. for the sale of realty under mortgage lien or other incumbrance.
- iv. for specific performance of a contract for the sale of realty within the State; or to establish or set aside a will.
- v. against non-residents or foreign companies having within the State property or debts owing to them sought to be appropriated in any way.
- vi. relating to realty within the State when the defendant has any claim upon it, and the relief claimed in the action is to exclude the defendant from it: This to apply to non-residents and foreign companies.
- vii. when the defendant is absent in order to defeat his creditors.
- viii. for divorce.

s. 2619. The publication is to be made in a newspaper to be selected by the plaintiff. Publication.

s. 2620. The defendant is held to have been personally served: Proof of publication is to be by affidavit of the publisher or his foreman.

ss: 2622—2625 relate to unknown defendants.

ss: 2875—2881 relate to the defendant's appearance and the plaintiff's proof.

These sections are the same as in the Indiana Code. ss: 40—43; 391—395. (pp: 137, 138).

s. 3715. The same as New York Code of Civil Procedure. s. 952. (p. 134).

PROOF OF FOREIGN
JUDGMENTS.

ss: 2351—2353. Foreign or United States probates are admitted to probate fully on production of a copy of the will and the original record of the probate attested by the clerk of the court under seal. Foreign probates.

The new probate is to be conclusive as to the due execution thereof until set aside by an original or appellate proceeding.

Chapter IV.

KANSAS.

Code of Civil Procedure. c. 80.

If foreign statute bars
remedy, defence good.

s. 22. If a cause of action is barred in the State in which it arose by reason of lapse of time, it is barred here between non-residents.

Foreign companies.

s. 70 provides for service of writ on the managing agent of a foreign company.

SERVICE ON ABSENT
DEFENDANTS.
—

ss: 72—77. Constructive service:

the same as in the Indiana Code (p. 137), except that actions for divorce are omitted.

c. 117.

Foreign probates.

ss: 25—27. Foreign probates are admitted fully in this State: On production of copy of will and original probate the court continues the motion to admit such will to probate for two months: The notice is published in the newspapers for three consecutive weeks, the first publication to be forty days before the final hearing.

KENTUCKY.

Revised Statutes. c. 63.

STATUTE OF LIMITA-
TION.
—

Actions on home or United States judgments are barred in 15 years; and on foreign judgments (presumably) in 10 years.

If foreign statute bars
action on judgment,
defence good.

s. 18. *Action on a foreign judgment.* If the action would be barred in the country where the judgment was pronounced, it is barred here, except in favour of residents in this State who have had the cause of action from the time it accrued.

If foreign statute bars
remedy, defence good.

s. 19. *Action on a cause of action.* If the action is barred in the country where the cause of action arose it is barred here as between any parties.

Code of Civil Procedure.

ss: 86. 87 refer to service of writ upon persons out of Kentucky but in the United States.

ss: 88—92. Service generally on absent defendants, the same as in the Indiana Code. (p. 137).

s. 148. In pleading a judgment the facts giving jurisdiction need not be stated.

This section does not apply to foreign judgments: a general averment of jurisdiction in the foreign tribunal would not be sufficient. * (*Hollister v. Hollister*. 10 How: N. Y. 539).

Chapter IV.

LOUISIANA.

Code.

s. 165. (b). When defendants are foreigners, or have no fixed or known place of residence in the State, they may be cited wherever they are found.

s. 753. When judgments have been rendered in foreign countries, the copies presented shall be considered authentic and admitted in evidence in the tribunals of the State, if they are clothed with all the forms required to prove their authenticity in the countries where they are pronounced.

The Laws of Las Siete Partidas are still in force in the State: Part III. Tit. xxii. Law 15 declares that 'judges sometimes compel defendants to appear before them who are of another jurisdiction, where the former have no power to hear and determine causes. We therefore say that every judgment rendered in such cases is void.'

SERVICE ON ABSENT
DEFENDANTS.
—PROOF OF FOREIGN
JUDGMENTS.
—

MAINE.

Code.

Actions on home or United States judgments are barred in 20 years, and on foreign judgments (presumably) in 6 years.

c. 81.

s. 17. If the defendant was never an inhabitant of the State, or has removed therefrom, service may be effected on his agent, tenant, or attorney.

s. 18. If he has neither, the court may order such notice as justice requires, if such order is complied with and obedience to it is proved to the satisfaction of the court, the defendant is held to answer to the suit as in other cases.

s. 22. In the case of insurance companies out of the State, Foreign companies. the agent may be served, or the writ may be left at his last and usual place of abode: or it may be served on the person, an inhabitant of the State, who signed or countersigned the policy. In either case, the court may direct further notice to the company.

SERVICE ON ABSENT
DEFENDANTS.
—

Chapter IV.

MARYLAND.

*Code.*SERVICE ON ABSENT
DEFENDANTS.
—

Art: 16. ss: 88—98. Service against non-residents may be constructive in suits respecting the sale, partition, conveyance or transfer of any real or personal property lying or being in the State; or to foreclose any mortgage thereon, or to enforce any contract or lien relating to the same, or concerning any use, trust or other interest therein.

Publication.

The published notice is to contain the substance of the bill and the time appointed for appearance.

In case of default the bill or petition may be taken *pro confesso*, or a commission to take testimony may be issued *ex parte*, and such decree passed as may be just and equitable.

Appeal.

A bill for review may be filed in 12 months: if against an infant, 12 months after he comes of age, or by his representatives 12 months after his death.

Foreign companies with no agent in the State may be served constructively. The order is to be published once a week for four weeks, or may be served personally three months before the trial.

Foreign companies.

Art: 75. ss: 99. 100. provide for service on the agent of foreign companies.

PROOF OF FOREIGN
JUDGMENTS.
—

Art: 37. s. 35. An exemplification of the record under the hand of the keeper of the same, and the seal of the court or office where such record may be made, is good and sufficient evidence in any court of the State, to prove any debt of record, made or entered in any other of the United States, or in any foreign country. Further, no sentence, judgment or decree, final or interlocutory of any judge, court, board, council or tribunal, having or exercising municipal, admiralty or prize jurisdiction without the limits of the United States and its territories, shall be conclusive evidence in any case or controversy in the courts of this State, of any fact, matter or thing therein contained, stated or expressed, except of the acts or doings of such foreign judge, court, board, council or tribunal:—Provided, that nothing herein contained shall impair or destroy the legal effects of any such foreign sentence, judgment or decree on the property affected or intended to be affected thereby.

Art: 93. s. 324. A copy of the record of any will according to the laws of the State, under the hand of the keeper of the record and the seal of the court shall be good evidence to prove the will.

Chapter IV.

Foreign probates.

MASSACHUSETTS.*Laws. c. 126.*

s. 1. No personal action may be commenced against a person out of the State at the time of service of the summons unless before such absence he had been an inhabitant of the State, or unless an effectual attachment of his goods, estate or effects is made on the original writ.

SERVICE ON ABSENT
DEFENDANTS.
—
in what cases.

s. 6. If personal service cannot be made, the court may order the action to be continued from time to time until notice of the suit is given in such manner as the court may direct.

s. 8. The plaintiff is required to give a bond before execution is issued, to repay the amount if the judgment is reversed within one year.

MICHIGAN.

Actions on home or United States judgments are barred in 10 years and on foreign judgments in 6 years.

MINNESOTA.*Laws. c. 66.*

Actions on home or U. S. judgments are barred in 10 years, and on foreign judgments (presumably) in 6 years.

ss: 49—51. The procedure as to constructive notice on non-resident defendants is the same as in the Indiana Code (p. 137): the judgment thereon may be opened within one year.

SERVICE ON ABSENT
DEFENDANTS.
—

MISSISSIPPI.*Laws. c. 43.*

ss: 96. 111. Actions on home, United States and foreign judgments are barred in 20 years.

c. 46.

s. 23. Foreign judgments given between persons residing in any foreign kingdom, if certified by the court, or mayor or chief

PROOF OF FOREIGN
JUDGMENTS.
—

Chapter IV.

magistrate in the manner such acts are usually authenticated by them; and all foreign judgments as have been given and enregistered in due form according to the laws of such foreign kingdom, and attested by a notary public, with a testimonial from the proper officer of the city where he resides, or the Great Seal of the kingdom, shall be evidence in all the courts of record within this State, as if the same had been proved in the said courts.

MISSOURI.*Laws, c. 164.*

SERVICE ON ABSENT
DEFENDANTS.
—

ss: 13—17. The procedure as to constructive notice or non-resident defendants is the same as in the Indiana Code. (p. 137).

NEVADA.*Laws, c. 49.*

STATUTE OF LIMITA-
TION.
—

s. 5. Actions on home or United States judgments are barred in 5 years.

s. 8. Actions on foreign judgments or foreign contracts are barred in 2 years.

A right of action shall be deemed to have accrued on a judgment at the time of its rendition.

If foreign statute bars
remedy, defence good.

s. 9. If a cause of action is barred in the country of its origin by reason of lapse of time, it is barred here.

c. 83.

SERVICE ON ABSENT
DEFENDANTS.
—

Constructive notice on non-residents and on foreign companies is allowed when it shall appear that a cause of action exists against the defendant.

c. 103.

PROOF OF FOREIGN
JUDGMENTS.
—

ss: 395. 399. The same as New York Code of Civil Procedure. ss: 952. 953. (p. 134).

NEW HAMPSHIRE.*Laws, c. 207.*

SERVICE ON ABSENT
DEFENDANTS.
—

ss: 3. 4. The court may order an action to be continued where there has been no personal service on the defendant, and may give directions as to notice of pendency being published, or being

sent by mail; and on satisfactory evidence that such order has been complied with, such notice shall be deemed sufficient.

s. 9. Where the defendant is non-resident and has no property within the State, the action may be entered in court and such notice ordered as the case requires.

Chapter IV.

NEW JERSEY.

Laws. Title xxii. c. 3.

ss: 3. 4. The copies of any last will or testament made in Great Britain and Ireland, or in any of the British colonies, by which any lands, tenements, hereditaments, or other estate within this province, are devised or bequeathed, certified under the seal of the office, where such will or testament is proved and lodged, may be given, and shall be received in evidence before any of the courts of judicature within this province, and be esteemed as valid and sufficient as if the original will or testament were then and there produced and proved.

Copies of wills of U. K. and colonies good evidence.

NORTH CAROLINA.

Actions on home or United States judgments are barred in 10 years and on foreign judgments (presumably) in 3 years.

The procedure as to constructive notice on non-resident defendants is the same as in the Indiana Code. (p 137).

SERVICE ON ABSENT DEFENDANTS.

OHIO.

Code of Civil Procedure.

ss: 70. 75. The procedure as to constructive notice on non-resident defendants is the same as in the Indiana Code. (p. 137).

The affidavit filed is to be sworn on positive information: and the published statement of the object of the suit and other particulars is to be very precise.

SERVICE ON ABSENT DEFENDANTS.

Code of Civil Procedure before Justices of the Peace.

s. 17. Service on managing agent of foreign companies.

Foreign companies.

‘Managing’ is to be construed strictly; if there is no managing agent the company is not liable to any proceedings *in personam*. *Barney v. New Albion R. R. Co.* (1 Handy. 571).

L

Chapter IV.

OREGON.

Stat : 2 March 1849.

Actions on home or United States judgments are barred in 10 years, and on foreign judgments (presumably) in 6 years.

Civil Code.

SERVICE ON ABSENT
DEFENDANTS.

Proof of certain foreign
documents.

ss: 55—57. The procedure as to constructive notice on non-resident defendants is the same as in the Indiana Code. (p. 137).

s. 4. That it may and shall be lawful for the keepers or persons having the custody of laws, judgments, orders, decrees, journals, correspondence or other public documents of any foreign Government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of one of the departments, the solicitor of the treasury, or the commissioner of the general land office, to authenticate the same under his hand and seal, and certify the same to be correct and true copies: and when the same shall be certified by an American minister or consul under his hand and seal of office, or by a judge of one of the United States courts under his hand and seal, to be true copies of the originals, the same shall be sealed up by him and returned to the solicitor of the treasury, who shall file the same in his office, and cause it to be recorded in a book kept for that purpose. Such copy may be read in evidence in all courts, where the title to land claimed by or under the United States may come into question, equally with the originals thereof.

Miscellaneous Laws. c. 64.

Effect of foreign wills
and probates.

Law of the place when
to govern, and when not.

Copies of foreign wills,
record of.

s. 17. Any person not an inhabitant, but owning property, real or personal, in this State may devise or bequeath such property by last will, executed and proved (if real estate be devised) according to the laws of this State, or (if personal estate be bequeathed) according to the laws of this State, or of the country, State or territory in which the will shall be proved.

s. 18. Copies of such wills, and the probate thereof, shall be recorded in the same manner as wills executed and proven in this State, and shall be admitted in evidence in the same manner and with like effect.

s. 19. Any such will may be contested and annulled within the same time, and in the same manner, as wills executed and proven in this State.

Chapter IV.

Foreign will, how contested.

PENNSYLVANIA.

Digest. p. 598.

In actions relating to realty, or when the court has acquired jurisdiction of the subject matter in controversy by the service of its process on one or more of the principal defendants, the court may order service out of the jurisdiction on the defendants wherever they may be found :—

SERVICE ON ABSENT DEFENDANTS.

Provided, that it shall appear by affidavit before the order is made, in what place the defendant resides or may probably be found, or if it be out of the United States, whether there are any officers of the United States residing thereat or near thereto, and by what means such service may be authenticated.

Affidavit.

The time is to be limited, dependent on the place where process is to be served, within which compliance with the requirements thereof must be made by the defendant.

Time for appearance.

A copy of the order is to be served, and also a copy of the bill or a statement of the substance of the proceeding, and the special order for authenticating the service. If the defendant is not to be found, publication of the notice with full particulars is allowed.

Publication.

RHODE ISLAND.

Statutes c. 196.

s. 4. A writ of summons issued against an insurance company incorporated in any other State or country, which shall have an agency in this State, shall be served by leaving an attested copy of such writ with such agent, or at his last and usual place of abode.

Service on foreign insurance company.

SOUTH CAROLINA.

Code of Civil Procedure.

s. 158. The cause of action arising within the State, the procedure as to constructive notice on non-resident defendants is the same as in the Indiana Code. (p. 137).

SERVICE ON ABSENT DEFENDANTS.

Chapter IV.

TENNESSEE.

Code.

STATUTE OF LIMITATION.

If foreign statute bars remedy, defence good.

s. 2783. Where the Statute of Limitations of another State or Government has created a bar to an action upon a cause accruing therein, whilst the party to be charged was a resident in such State or under such Government, the bar is equally effectual in this State.

s. 2776. Actions on home, United States or foreign judgments are barred in 10 years.

Service on foreign companies.

s. 2834. When a corporation, company or individual has an office or agency in any country other than that in which the principal resides, the service of process may be made on any agent or clerk employed therein, in all actions growing out of or connected with the business of the office or agency.

PROOF OF FOREIGN JUDGMENTS.

s. 3797. The same as New York Code of Civil Procedure, s. 952. (p. 134).

TEXAS.

Code.

PROOF OF FOREIGN JUDGMENTS.

ss: 3957. 3958. Foreign judgments are required to be under the certificates of the judge and clerk of the court, the chief of the Executive Government of the country, and the Consul of the Republic: and no suit shall be brought on a foreign judgment till an authenticated copy is filed, and all costs likely to accrue are paid, together with a tax fee of \$25 cash, payable to the clerk of the court 'for the use of this Republic.'

Charges.

EFFECT OF FOREIGN JUDGMENTS.

Original defences allowed.

s. 3959. Foreign judgments when authenticated are *prima facie* evidence only and open to all defences that might have been used at any time before judgment.

This does not apply to judgments of the United States.

[In Paschall's edition of the Code it is stated that these sections are not pursued in practice, but the Editor's own idea is that they still remain in force.]

VERMONT.

Actions on home or United States judgments are barred in 8 years, and on foreign judgments (presumably) in 6 years.

VIRGINIA.**Chapter IV.**

Laws c. 149.

s. 17. An action on a foreign judgment is barred if it is barred by its own laws and the judgment incapable of being otherwise enforced there, and whether or not so barred, no actions on the judgment shall be brought after 10 years against a person who shall have resided in the State during the ten years next preceding such action.

If foreign statute bars remedy, defence good.

c. 171.

s. 7. If the officer return the defendant as non-resident, the suit shall abate if the court have jurisdiction of the case only on the ground of the defendant's residence in the State.

ABSENT DEFENDANTS.
—

ss: 10. 13. Publication is made in the same manner as in Indiana. The judgment may be reopened within 5 years if no copy of the judgment was served, and in one year if a copy was served.

Publication of service.

c. 176.

s. 17. A foreign judgment is evidence in any court in the State when it has been attested by a notary public under the seal of his office that the judgment was made in due form according to the law of the place, and that the copy is true. The notary public himself is to be certified by the chief magistrate, or under the Great Seal of the country.

PROOF OF FOREIGN JUDGMENTS.
—

WISCONSIN.

Actions on home judgments are barred in 20 years, on United States judgments in 10 years, and on foreign judgments (presumably) in 10 years.

The procedure as to constructive notice on non-resident defendants is the same as in the Indiana Code. (p. 137).

SERVICE ON ABSENT DEFENDANTS.
—

SOUTH AMERICA.

ARGENTINE CONFEDERATION.

[including the Provinces of the RIO DE LA PLATA and EAST PATAGONIA].

Civil Code [1 January 1871].

Election of domicil in agreement.

Title vi. s. 13. Persons in entering into agreements may elect a special domicil for the fulfilment of the same.

s. 14. The election of a domicil carries with it the extension of the jurisdiction, which would not otherwise extend to the judges of the place of residence of the parties.

BOLIVIA.

Civil Code [1830].

s. 7. Foreigners in Bolivia shall enjoy the same civil rights as those which are or may be granted to Bolivians by treaties, or which may arise therefrom.

Judicial hypothec.

s. 1458. The same as Code Napoleon, s. 2123. (p. 96).

There is a treaty with Peru, 5 November 1863, for the mutual enforcement of the judgments of the two Republics.

BRAZIL.

[SPENCE'S TRANSLATION].

Commercial Code.

s. 30. All commercial transactions entered into by foreigners resident in Brazil, shall be regulated and decided by the provisions of this Code.

The Tribunal of Commerce of Rio has decided, that the courts have no jurisdiction under this section over a foreigner who is not domiciled in the Empire in respect of contracts entered into in a foreign country, but not enforceable in the Empire by reason of their not having been entered into with Brazilians.

CHILI.

Civil Code [1855, republished 1865].

s. 57. The law does not recognise any difference between Chilians and foreigners with respect to the acquisition and enjoyment of the civil rights prescribed in this Code.

MEXICO.

Chapter IV.

[including LOWER CALIFORNIA].

The Civil Code of Mexico is the same as that of Spain. A Code of Civil Procedure was promulgated 15 August 1872 based upon the new Spanish Code.

PERU.

[P. PRADIER FODÉRE.
J. D. I. P. 1879.
pp: 41. 250].

Civil Code.

Preliminary Title. V. Foreign judgments relating to immoveables in Peru will not be made executory.

s. 37. Peruvians and strangers domiciled in Peru, wherever they may be found, may be cited to appear before the Peruvian courts for causes of action arising out of contracts entered into, even in foreign countries with respect to matters on which Peruvian law allows contracts.

SERVICE ON ABSENT
DEFENDANTS.

in what cases.

s. 38. Foreigners found in Peru, though not domiciled, may be sued on contracts made with Peruvians even abroad with respect to matters not forbidden by Peruvian law.

[Prohibited Contracts cf: §§: 1252—5—1279].

The action under section 38 once begun, residence by the defendant is not necessary if a proper attorney has been instructed, or security for costs given under sections 573-4 of the Code of Civil Procedure.

s. 39. Domiciled or non-domiciled foreigners may be cited,

- i. in real actions concerning immoveables in Peru.
- ii. in civil actions for a fault or wrong committed in Peru.
- iii. on contracts with agreed submission to the Peruvian courts.

s. 43. Actions may not be brought on contracts entered into abroad between foreigners unless the contracting parties have submitted to the Peruvian tribunals.

There is a treaty with Bolivia, 5 November 1863, for the mutual enforcement of the judgments of the two Republics.

There appears to be some doubt whether a treaty with the foreign country is not a condition precedent to giving executory force to its judgments:—

The rogatory commission is as follows :

Chapter IV.

Form of rogatory commission.

It is to be addressed to the legation accredited by the foreign State to Peru.

Thence it is to be sent to the Minister of Foreign Affairs: thence to the judge who is asked to give the judgment executory force.

The same formalities are pursued in returning the papers.

It is to be on stamped paper, sealed by the foreign court sending it, signed by the president of the court, and certified by the secretary of the court, or the counsel engaged.

The formula is:—‘*Au nom de la nation, la cour de — (or ‘le juge de —)’*: then follows a résumé of the questions ‘*qu’on donne à la commission*’—also copies of all papers. Finally the prayer ‘*qu’on accomplisse.*’

URUGUAY.

The Civil Code [1867] resembles the Chilian Code.

VENEZUELA.*Civil Code.*

s. 17. Foreigners enjoy in Venezuela the same civil rights as the Venezuelans, with such exceptions as may be in existence or may be made hereafter.

s. 1818. The same as Code Napoleon, s. 2123. (p. 96).

*Code of Civil Procedure [1873].***EXECUTION OF ACTS DONE BY FOREIGN AUTHORITIES.**

EFFECT OF FOREIGN
JUDGMENTS.
—

s. 551. It is in the jurisdiction of the supreme federal court to grant executory force to judgments given by foreign authorities.

s. 552. In order that a judgment pronounced by a foreign tribunal may have force and effect in the Republic, it is necessary,

- i. that the sentence or judgment should not affect immoveable property in Venezuela:
- ii. that the judgment be granted by a competent judicial authority:

Defences.

- iii. that the judgment be granted after the parties interested were duly summoned:
- iv. that the agreement for the fulfilment of which the proceedings were instituted be lawful in Venezuela, and that the judgment do not contain any resolution contrary to public order or public rights according to the internal laws of Venezuela.

s. 553. In order that the judgment may be made executory it is necessary that the party against whom it has been given shall be summoned ten days previous to the hearing, and that the party or parties be permitted to reply verbally in public sitting whatever they may consider it convenient to say in defence of their claims or rights. Procedure.

The party who promotes the suit shall present the judgment in an authenticated form.

s. 554. The dispositions made by foreign tribunals respecting the examination of witnesses, estimates, affidavits, interrogatories and other acts of instruction simply that may have to be carried into effect in the Republic, shall be done in pursuance of a decree by the judge of the court of first instance having jurisdiction in the locality wherein such acts are to be carried into effect. Execution of interlocutory decrees.

s. 555. The rules laid down in the preceding article are applicable also to a summons or writ that may be issued against any person residing in the Republic, to appear before foreign authorities, and also to the notification of documents coming from a foreign country. Leave to serve if writ issued by foreign jurisdiction.

s. 556. The provisions of this title are subordinate to those laid down in international treaties and conventions and to those prescribed by special laws.

CHAPTER V.



AFRICA.

A F R I C A.

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EGYPT.

[A. DELOS].

Civil Code.

s. 13. All subjects resident in the country may be cited before the tribunals of the country for obligations contracted by them even abroad.

s. 14. The same applies to foreigners resident in the country. A foreigner who has left the country can only be cited before the tribunals in the following cases :—

SERVICE ON ABSENT
DEFENDANTS.

- i. With respect to obligations relating to moveables or immoveables existing in the country.
- ii. With respect to obligations arising out of contracts agreed or of necessity to be executed in the country, or with respect to acts which may have been accomplished there :

Without prejudice to the competency of the tribunals of commerce in the cases settled by law, and whatever be the residence of the defendant.

s. 682. Judicial hypothec results from judgments : [there is no Judicial hypothec. mention of foreign judgments as in the Code Napoleon, s. 2123].

Code of Civil Procedure.

s. 35. The Egyptian tribunals have jurisdiction in respect of immoveables situate in the country : companies, (by the tribunal of the place where their branch office is situate) : bankruptcy in the country : elected domicil by reason of a contract to be

Chapter V.

executed in the country: cases of guarantee: reconvention, or counterclaim against a plaintiff who has availed himself of the Egyptian courts: by reason of contracts entered into in the country: in cases of succession to property in the country.

(9.) When the defendant is domiciled abroad, and when no Egyptian tribunal has jurisdiction under the preceding paragraph, the writ may be served at the place of the defendant's residence, or in default before the court at Alexandria.

LIBERIA.

Laws and Treaties. Vol: 6. Chap: xi. [1857].

PROOF OF FOREIGN
JUDGMENTS.

s. 10. The judgments of foreign courts and foreign records and the written laws of other countries must be proved by copies attested in the most solemn manner usual in such countries: and proof must be given as to what is the most solemn manner used in such countries.

EFFECT OF FOREIGN
JUDGMENTS.

s. 16. A foreign judgment is evidence in the same manner as a domestic one, its existence having been first proved, and also the existence of the law upon which it is founded. But no proof need be given of the law of nations.

s. 17. A judgment of a foreign prize court is not conclusive evidence of any act whatever, but it is some evidence.

Judgment by default.

s. 18. A foreign judgment in a case in which the defendant did not appear, although a party thereto, shall be no evidence against him. But if any person have appeared for his interest, it shall be evidence, unless he show that the appearance was without his authority.

s. 22. In all cases where the judgment of a foreign court is relied on in evidence, the jurisdiction of such court must be proved to extend to the case in which the judgment was given.

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